IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962

Number 22

JAMES P. WESBERRY, JR., and CANDLER CRIM, JR.,
Appellants,

vs.

S. ERNEST VANDIVER, as Governor of the State of Georgia, and BEN W. FORTSON, JR., as Secretary of State of the State of Georgia,
Appellees.

On Appeal from the United States District Court for the Northern District of Georgia.

MOTION TO AFFIRM OR DISMISS WITH SUPPORTING BRIEF.

EUGENE COOK,
The Attorney General,
PAUL ROGERS,
Assistant Attorney General,
DONALD E. PAYTON,
Assistant Attorney General,
Counsel for Appellees.

P. O. Address:
132 Judicial Building,
40 Capitol Square,
Atlanta 3, Georgia.

November 6, 1962.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CHestnut 1-4477.

INDEX.

II.

Cases Cited.

Statutes Cited.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

Number 507.

JAMES P. WESBERRY, JR., and CANDLER CRIM, JR.,
Appellants,

vs.

S. ERNEST VANDIVER, as Governor of the State of Georgia, and
BEN W. FORTSON, JR., as Secretary of State of
the State of Georgia,
Appellees.

On Appeal from the United States District Court for the
Northern District of Georgia.

MOTION TO AFFIRM OR DISMISS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Come now S. Ernest Vandiver, as Governor of the State of Georgia, and Ben W. Fortson, Jr., as Secretary of State of the State of Georgia, the Appellees herein, and, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move the Court: (1) to affirm the judgment from which the appeal in the above-entitled cause purports to have been taken, on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument; or, in the alternative, (2) to dismiss this

appeal in the above-entitled cause, (a) on the ground that the matters in controversy in this action and upon this appeal have become abstract and moot by virtue of the holding of the General Election on November 6, 1962, and the election therein of the Representatives of the people of Georgia in the House of Representatives of the Congress of the United States, or, (b) on the ground that it presents no substantial federal question.

This, the 8th day of November, 1962.

EUGENE COOK,
The Attorney General,

PAUL RODGERS,
Assistant Attorney General,

DONALD E. PAYTON,
Assistant Attorney General,
Counsel for Appellees.

P. O. Address:
132 Judicial Building,
40 Capitol Square,
Atlanta 3, Georgia.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

Number 507.

JAMES P. WESBERRY, JR., and CANDLER CRIM, JR.,
Appellants,

vs.

S. ERNEST VANDIVER, as Governor of the State of Georgia, and BEN W. FORTSON, JR., as Secretary of State of the State of Georgia,
Appellees.

On Appeal from the United States District Court for the Northern District of Georgia.

BRIEF SUPPORTING MOTION TO AFFIRM OR DISMISS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

STATEMENT.

On April 17, 1962, the Appellants filed their Complaint[1] in the District Court for the Northern District of Georgia seeking injunctive relief[2] against the enforcement of the Georgia Congressional Reapportionment Act of 1931[3] and

[1] Record, pp. 1-16.

[2] Record, p. 3, par. VI, p. 11, par. XXV, p. 13, prayers (g) and (h).

[3] Ga. Laws, 1931, p. 46; Ga. Code, Sec. 34-2301.

declaratory judgment[4] invalidating the Act on the grounds that it infringed upon rights of the Appellants guaranteed by the Equal Protection,[5] Due Process,[6] and Privileges and Immunities[7] Clauses of the Fourteenth Amendment, and, further that the Act violated Section 2 of Article I of the Federal Constitution requiring that Representatives be chosen by the people.[8] The Complaint prayed, *inter alia*, that no elections for Representatives be held, except on a state-at-large basis, pending redistricting by the state legislature on an "equitable and representative" basis.[9] By virtue of these allegations, a three-judge court was convened pursuant to 28 U. S. C., Sections 2281 and 2284, to hear and determine the cause.

In argument before the lower court, the Appellants placed chief reliance upon *Baker v. Carr*,[10] whose rationale went no further than to open the doors of the courts for the adjudication of the consistency of state action with the Federal Constitution when no question is involved concerning interference by the federal judiciary with a political branch of government coequal with this Court. On the other hand, the Appellees, in contending no equity in the Complaint, placed chief reliance upon *Colegrove v. Green*,[11] which denied relief to parties seeking congressional redistricting in Illinois under facts more extreme than those presented in this case.

---

[4] Record, p. 3, par. VI.

[5] Record, p. 9, par. XVIII, p. 12, prayer (d).

[6] Record, p. 10, par. XX, p. 12, prayer (c).

[7] Record, p. 9, par. XVII, p. 12, prayer (e).

[8] Record, p. 9, par. XVII, p. 10, par. XIX, p. 13 (f).

[9] Record, p. 12, par. XXVII, p. 13, prayer (i).

[10] (1962), 369 U. S. 186, 7 L. ed. 2d 663, 82 S. Ct. 691.

[11] (1946), 328 U. S. 549, 90 L. ed. 1432, 66 S. Ct. 1198, reh. den. 329 U. S. 825, 91 L. ed. 701, 67 S. Ct. 118, rearg. den. 329 U. S. 828, 91 L. ed. 703, 67 S. Ct. 199.

On June 20, 1962, the lower court rendered final judgment dismissing the Complaint for want of equity. The court in its opinion summarized the national picture on congressional districting in the following terms:[12]

> The problem here is not peculiar to Georgia. For example, Florida has recently substantially changed its congressional districts by reason of the addition of four new congressmen making a total of twelve. The districts there now range in population from a low of 241,250 to a high of 660,345 as compared to the Florida average of 412,630 a variance greatly exceeding the suggested standard.[13] Dade County with a population of 935,047 is divided among two districts, one consisting of a part of Dade County only, and the other consisting of an adjoining county and the balance of Dade County. Duvall, Hillsborough, and Pinellas Counties each constitutes a district under the new plan with populations, respectively of 455,411, 397,788, and 374,665, a sharp example of the variance in population per district if counties are to continue as a basis for districts except where the population of a county is so large as to require division.
>
> There are 435 congressional districts in the United States. Twenty-two congressmen will be elected state-at-large in 1962. Of the remaining 413, the Fifth District of Texas has the largest population, 951,527. The Fifth District of Georgia, here under discussion is next. There are twenty-two districts with popula-

---

[12] Jurisdictional Statement, p. 27, 2d par., 206 F. Supp. 280, 1. col., 2d par. For a statistical analysis of the national posture of congressional districting, see Defendants' Exhibits Nos. 1, 2, 3, 4 and 8 (adm. R. 65).

[13] "It is the position of plaintiffs that the population of each district should be within a range of ten to fifteen percent of the average district population based on a division of the number of districts into the total population of the state." Jurisdictional Statement, p. 25, last par., 206 F. Supp. 279, r. col., 2d par.

tions exceeding 600,000. Eighty districts have populations more than fifteen per cent above the state average, while ninety have populations of more than fifteen per cent below the state district average. Using ten per cent as a variance, or tolerance, one hundred eight districts are above and one hundred twenty-five are below the average, a total of two hundred thirty-three or more than one-half of all congressional districts. These figures in no way reflect on the problem of deprivation of rights of the type here asserted through use of the gerrymander, a problem with which we are not concerned here but one that could well be within the rationale of any decision reached.

The lower court recognized that a constitutionally reapportioned state legislature could well provide the relief sought by the Appellants, by stating that:[14]

> Our view is buttressed by a due regard for the admonition in *Baker v. Carr* that a "judicially manageable standard" be adopted. This dictates that a reasonable time be afforded for the normal state governmental processes, where there is a substantial chance of relief as we believe there is, to run their course.

The court then moved on to an evaluation of the present vitality of *Colegrove* in the light of *Gomillion v. Lightfoot*[15] and *Baker v. Carr*, and reached the following conclusion:[16]

> It would be extraordinary indeed for the court to have departed any more than was absolutely necessary

---

[14] Jurisdictional Statement, p. 31, 3d par., 206 F. Supp. 282, r. col. (7).

[15] (1960), 364 U. S. 339, 5 L. ed. 2d 110, 81 S. Ct. 125.

[16] Jurisdictional Statement, p. 37, last par., 206 F. Supp. 285, r. col., 2d par.

from the previous standard of withholding judicial relief in matters of the kind involved in *Baker v. Carr*, and a good reason to preserve the *Colegrove* doctrine while at the same time reversing the body of law as it concerned state action alone was that fairly apportioned state legislatures might well alleviate congressional district disparity. But whatever the reason we think *Colegrove* stands and so long as it does it will be our guide.

We do not deem it to be a precedent for dismissal based on the non-justiciability of a political question involving the Congress as here, but we do deem it to be strong authority for dismissal for want of equity when the following factors here involved are considered on balance: a political question involving a coordinate branch of the federal government; a political question posing a delicate problem difficult of solution without depriving others of the right to vote by district, unless we are to redistrict for the state; relief may be forthcoming from a properly apportioned state legislature; and relief may be afforded by the Congress.

SUMMARY OF ARGUMENT.

I.

The judgment of the lower court should be affirmed for properly dismissing the complaint for a want of equity.

Affirmance may be rested upon either *Colegrove v. Green*, 328 U. S. 549, the only case directly in point, or upon the abstention doctrine because of the likelihood that state legislative action will afford the relief sought by the Appellants.

A. *The Colegrove Doctrine.* In *Colegrove*, the petitioners challenged the constitutionality of an Illinois statute establishing congressional districts having population disparities far in excess of those present in this case. Justice Frankfurter announced the judgment of the Court in an opinion, concurred in by Justices Reed and Burton, stating that dismissal of the action was required both by *Wood v. Broom*, 287 U. S. 1, holding that there is no federal requirement that congressional districts shall contain as nearly as practicable an equal number of inhabitants, and because the complaint suffered from a want of equity. The opinion emphasized that the relief sought by the petitioners was beyond the competence of this Court to grant, and "that the Constitution has conferred upon Congress exclusive authority to secure fair representation by the States in the popular House and left to that House determination whether States have fulfilled their responsibility," 328 U. S. 554, and that the remedy for any failure in this area lies with the Congress and ultimately with the people.

Justice Rutledge concurred in the judgment because he believed the Court should exercise its discretion to dismiss for a want of equity. Justices Black, Douglas and

Murphy joined in a dissent predicated upon the assumption that there was no likelihood that Illinois would afford relief to the petitioners. As we will see later, such an assumption is unwarranted in this case because of the probability that the reconstituted Georgia legislature will afford the relief sought by the Appellants.

The *Colegrove* doctrine has in effect been reaffirmed by this Court through the citation of *Colegrove* as authority in the following cases which avoided intervention in political matters: *Radford v. Gary*, 352 U. S. 991; *Kidd v. McCanless*, 352 U. S. 920; *South v. Peters*, 339 U. S. 276; and *MacDougall v. Green*, 335 U. S. 281.

In *Gomillion v. Lightfoot*, 364 U. S. 339, decided on November 14, 1960, this Court invalidated a state statute redefining the boundaries of the City of Tuskegee on the ground of unconstitutional racial discrimination. In its opinion, this Court carefully distinguished between *Colegrove* and *Gomillion* thereby demonstrating clearly the intention to preserve *Colegrove*.

In *Baker v. Carr*, 369 U. S. 186, the apparent inspiration for this litigation and the case most heavily relied upon by the Appellants, this Court went no further than to open the doors of the courts for the adjudication of the consistency of state action with the Federal Constitution when no question is involved concerning interference by the federal judiciary with a political branch of government coequal with this Court. In its opinion, the Court elaborately distinguished between the "political question" cases and those appropriate for adjudication, thereby clearly maintaining the vitality of *Colegrove* within the political sphere. 369 U. S. 210, 226.

The "political question" doctrine is characterized by the interrelationships of the federal courts to the other two branches of the Federal Government, and not the re-

lationship of such courts to the States. The delicate questions involved in these separation of powers contexts were not present in *Baker*, which only involved the federal courts and a state and the well settled criteria developed under the Equal Protection Clause.

In *Wood*, *Colegrove* and *Baker*, this Court has clearly announced its judgment that claims of the nature here presented are not appropriate for adjudication.

B. *The Abstention Doctrine.* The impact of *Baker v. Carr* has created a dramatic transformation in the political life of Georgia.

On April 28, 1962, a three-judge district court held in *Sanders v. Gray*, 203 F. Supp. 158, that Georgia's county-unit method of tabulating the vote cast in party primaries for the nomination of candidates for the Governorship and other statewide offices was unconstitutional by virtue of the severe dilution of the urban vote. Consequently, a candidate was nominated for the office of Governor in a primary where all votes were tabulated equally, and, thereafter, the candidate was elected Governor by the people of Georgia in the General Election held on November 6, 1962. It is a matter of common knowledge in Georgia that the Governor exercises great influence upon the activity of the General Assembly of Georgia.

On May 25, 1962, a three-judge district court held in *Toombs v. Fortson*, 205 F. Supp. 248, that the General Assembly of Georgia, composed of a Senate and House of Representatives, was unconstitutionally constituted in that neither House thereof was apportioned according to population. The court further held that the General Assembly must be reconstituted so that at least one House thereof will have been reapportioned according to population prior to the convening of the General Assembly in January 1963. In accordance with this judgment, the General

Assembly convened in extraordinary session and on October 5, 1962, reapportioned the membership of the Senate entirely on a population basis. The membership of this reconstituted Senate was elected at the General Election held on November 6, 1962. The General Assembly convenes in regular session on the second Monday in January of each year.

It is interesting to note that Appellant Wesberry was elected as a member of the reconstituted Senate and that he campaigned on a promise to seek congressional redistricting. He has not previously been elected to membership in the General Assembly.

The membership of the House of Representatives of the General Assembly is composed of 205 Representatives, 84 of whom represent the 38 most populous counties. While the House is apportioned largely according to geography, it is nevertheless clear that the urban areas possess a powerful voice in the House.

These factors compellingly illustrate the likelihood, recognized by the lower court, that the relief sought by Appellants will be afforded by the reconstituted General Assembly. This likelihood is further intensified by the election of Appellant Wesberry to the State Senate upon a pledge of congressional redistricting. He may reasonably anticipate the cooperation of the Governor, his fellow Senators, and a substantial representation in the House, in securing the congressional redistricting he seeks in this case.

These circumstances call for the application of the abstention doctrine.

The determination which the Appellants would have this Court make lies in an extremely sensitive area involving the relationship of the powers of the National Government to those of the States. Here, of all places,

the federal courts should act cautiously and with great circumspection and should avoid any action where relief may be furnished by the State. This philosophy of comity governing federal-state relations has been applied by this Court in myriads of contexts.

The cases in which the abstention doctrine has been applied reflect a sound and salutary policy derived from our federalism for the purpose of maintaining a balanced and harmonious relationship between federal and state authority. The considerations that prevailed in the abstention cases for avoiding the hazards of serious disruption by federal courts of state government or needless friction between federal and state authority are all the more appropriate in this case where there is a strong likelihood that the issues will be resolved by state legislative action. Under such circumstances, the lower court did not abuse its discretion in dismissing the Complaint.

C. *Conclusion.* The Defendants' Exhibits (1-4, 8; R. 65) and the findings of the lower court clearly illustrate that the form of congressional districting complained of in Georgia is not exotic, but epitomizes a national practice. Furthermore, the figures in these Exhibits do not tell the whole story because they do not show the gerrymander, a common method of districting in many states. This big picture is significant because any direct change by the Court in this area would create a vast national impact. It means that if the claims of the Appellants are legally justified at this time, then the very existence of the present membership of the National House of Representatives is placed in jeopardy.

However, in *Baker v. Carr* this Court has set in motion a great engine designed to give the urban areas of the Nation a far greater influence in their state legislatures, an influence which obviously will result in the reshaping of congressional districts strictly according to population.

Through this reaction the Appellants will achieve their ends. But, here they seek to catapult this Court into an area constitutionally insulated against judicial interference and involving the most sensitive and delegate relationships with the Congress. In recognition of this, the Court has wisely preserved *Colegrove* and is properly leaving congressional redistricting to reapportioned state legislatures.

Georgia has reconstituted its legislature according to federal decree thereby creating the likelihood of congressional redistricting. Furthermore, Appellant Wesberry through his election as a state senator, is in a unique position to effectively achieve within the state legislative framework the relief he here seeks.

In view of these considerations, the judgment of the lower court should be affirmed.

II.

This appeal should be dismissed on the ground that the matters in controversy have become moot or that no substantial federal question is presented.

A. *Mootness.* The immediate object of the Complaint in this case was to require congressional redistricting prior to the holding of the General Election on November 6, 1962; or, in the alternative, to require the election of Representatives on a state-at-large basis in the General Election. The Election has now been held and the Representatives of the people of Georgia have been elected for the succeeding two years and, therefore, the immediate controversy between the parties has become moot. There are no acts to restrain at the present time and the other relief sought by the Appellants would have no immediate effect because Georgia's congressional representation has been fixed for the 1963-64 term.

Nevertheless, the Appellants attempt to maintain an active controversy by seeking injunctive and declaratory relief aimed at the General Election to be held on November 3, 1964, and subsequent elections. However, the seeking of this additional relief does not rescue the appeal from its newly acquired theoretical status because the appeal now only presents an abstract question divorced from any presently existing right or actual controversy. This mootness is further intensified by the probability that the state legislature will afford the relief sought, and the possibility that the Appellants may be ineligible to vote in subsequent general elections through a change in residence or otherwise. What the Appellants really seek at this time is an advisory opinion which is not susceptible of judicial determination.

B. *No Substantial Federal Question.* In *Remmey v. Smith*, 102 F. Supp. 708, the plaintiffs sought to have a state apportionment act declared unconstitutional and to compel the state legislature to reapportion itself. The three-judge district court held that the suit was premature, on the possibility that the state legislature would afford the relief sought, and dismissed for want of equity.

Upon appeal, this Court entered a *per curiam* opinion stating in part that "The motion to dismiss is granted and the appeal is dismissed for the want of a substantial Federal question." *Remmey v. Smith*, 342 U. S. 916.

The dismissal granted by this Court in *Remmey* is even more appropriate in this case because it involves congressional redistricting in contrast with state legislative reapportionment and, furthermore, because there is a stronger likelihood in this case that the state legislature will afford the relief sought by the Appellants.

ARGUMENT.

I.

THE JUDGMENT OF THE DISTRICT COURT SHOULD BE AFFIRMED FOR PROPERLY DISMISSING THE COMPLAINT FOR A WANT OF EQUITY.

Affirmance may be rested upon either *Colegrove v. Green*, supra, the only case directly in point, or upon the abstention doctrine because of the likelihood that state legislative action will afford the relief sought by the Appellants.

A. The *Colegrove* Doctrine.

In *Wood v. Broom*[17] a voter attacked the 1932 Mississippi Congressional Redistricting Statute as violating Article I, Section 4, and the Fourteenth Amendment, of the Federal Constitution and the 1911 Federal Congressional Reapportionment Act.[18] This Court ruled that no federal requirement, directing that congressional districts be composed of contiguous and compact territory and contain as nearly as practicable an equal number of inhabitants, existed where not embodied in the 1929 Federal Congressional Reapportionment Act, and that the provision to that effect in the preceding 1911 Reapportionment Act had reference solely to the districts in which the Representatives were to be elected under the apportionment made by that Act. This Court reversed and remanded the case to the district court with directions to dismiss the complaint. Justices Brandeis, Stone, Roberts and Cardozo concurred in the result, but were of the opinion that the decree should be reversed and the bill dismissed

---

[17] (1932), 287 U. S. 1, 77 L. ed. 131, 53 S. Ct. 1.

[18] Id., 287 U. S. 4 last par., 77 L. ed. 133, r. col., 1st par.

for want of equity, without passing upon the question as to the applicability of the 1911 Reapportionment Act.[19]

The evidence is abundant that *Wood* coincided with congressional intent. The Congress has consistently failed to re-enact the districting requirements of the 1911 Federal Congressional Reapportionment Act or similar ones, irrespective of persistent efforts on the part of some members of the Congress to restore such requirements.[20]

In *Colegrove v. Green*,[21] this Court was confronted with an action instituted by Illinois voters residing in congressional districts whose populations ranged from 612,000 to 914,000. Twenty other congressional districts had populations that ranged from 112,116 to 385,207 and in seven of these districts the population was below 200,000.[22] The appellants claimed that since they resided in the heavily populated districts their vote was much less effective than the vote of those residing in a district which under the 1901 State Apportionment Act was also allowed to choose one congressman, though its population was sometimes only one-ninth that of the heavily populated districts.[23] The appellants contended that this reduction of the effectiveness of their vote violated Article I and the Fourteenth Amendment of the Federal Constitution.[24]

---

[19] Id., 287 U. S. 8, last par., 77 L. ed. 135, r. col., last par.

[20] Notable among these efforts, are those of Representative Emanuel Celler of New York as a member of the House Judiciary Committee.

[21] (1946), 328 U. S. 549, 90 L. ed. 1432, 66 S. Ct. 1198, reh. den. 329 U. S. 825, 91 L. ed. 701, 67 S. Ct. 118, rearg. den. 329 U. S. 828, 91 L. ed. 703, 67 S. Ct. 199.

[22] Id., 328 U. S. 566, last par., 90 L. ed. 1443, l. col., last par.

[23] Id., 328 U. S. 567, last par., 90 L. ed. 1444, l. col. We should note here, that in Georgia the most extreme ratio is approximately three to one. Jurisdictional Statement, p. 25, 1st par., 206 F. Supp. 279, l. col., 4th par.

[24] Id., 328 U. S. 567, last par., 90 L. ed. 1443, r. col., last par.

Justice Frankfurter announced the judgment of the Court in an opinion concurred in by Justices Reed and Burton wherein they opined that dismissal of the complaint was required both by *Wood v. Broom*, supra, holding that there is no federal requirement that congressional districts shall contain as nearly as practicable an equal number of inhabitants and because the complaint suffered from a want of equity.[25]

In commenting on *Wood v. Broom*, Justice Frankfurter stated that:[26]

> Nothing has now been adduced to lead us to overrule what this Court found to be the requirements under the Act of 1929, the more so since seven Congressional elections have been held under the Act of 1929 as construed by this Court. No manifestation has been shown by Congress even to question the correctness of that which seemed compelling to this Court in enforcing the will of Congress in *Wood v. Broom*.
>
> But we also agree with the four Justices (Brandeis, Stone, Roberts, and Cardozo, JJ.) who were of opinion that the bill in *Wood v. Broom*, supra, should be "dismissed for want of equity."

Justice Frankfurter further stated that:[27]

> We are of opinion that the petitioners ask of this Court what is beyond its competence to grant. This is one of those demands on judicial power which cannot be met by verbal fencing about "jurisdiction." It must be resolved by considerations on the basis of which this Court, from time to time, has refused to intervene in controversies. It has refused to do so because due regard for the effective working of our

---

[25] Id., 328 U. S. 551, 2d par., 90 L. ed. 1433, l. col., last par.

[26] Id.

[27] Id., 328 U. S. 552, 2d par., 90 L. ed. 1433, r. col., last par.

government revealed this issue to be of a peculiarly political nature and therefore not meet for judicial determination. . . .

Of[28] course no court can affirmatively re-map the Illinois districts so as to bring them more in conformity with the standards of fairness for a representative system. At best we could only declare the existing electoral system invalid. The result would be to leave Illinois undistricted and to bring into operation, if the Illinois legislature chose not to act, the choice of members for the House of Representatives on a state-wide ticket. The last stage may be worse than the first. The upshot of judicial action may defeat the vital political principle which led Congress, more than a hundred years ago, to require districting. This requirement, in the language of Chancellor Kent, "was recommended by the wisdom and justice of giving, as far as possible, to the local subdivisions of the people of each state, a due influence in the choice of representatives, so as not to leave the aggregate minority of the people in a state, though approaching perhaps to a majority, to be wholly over-powered by the combined action of the numerical majority, without any voice whatever in the national councils." 1 Kent, Commentaries, 12th ed., 1873, 230-231, note (c). Assuming acquiescence on the part of the authorities of Illinois in the selection of its Representatives by a mode that defies the direction of Congress for selection by districts, the House of Representatives may not acquiesce. In the exercise of its power to judge the qualifications of its own members, the House may reject a delegation of Representatives-at-large. . . .

The[29] petitioners urge with great zeal that the conditions of which they complain are grave evils and

---

[28] Id., 328 U. S. 553, 1st par., 90 L. ed. 1434, 1. col., last par.

[29] Id., 328 U. S. 554, 2d par., 90 L. ed. 1434, r. col., last par.

offend public morality. The Constitution of the United States gives ample power to provide against these evils. But due regard for the Constitution as a viable system precludes judicial correction. Authority for dealing with such problems resides elsewhere. Article 1, § 4 of the Constitution provides that "The Times, Places and Manner of holding Elections for . . . Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, . . ." The short of it is that the Constitution has conferred upon Congress exclusive authority to secure fair representation by the States in the popular House and left to that House determination whether States have fulfilled their responsibility. If Congress failed in exercising its powers, whereby standards of fairness are offended, the remedy ultimately lies with the people. Whether Congress faithfully discharges its duty or not, the subject has been committed to the exclusive control of Congress. An aspect of government from which the judiciary, in view of what is involved, has been excluded by the clear intention of the Constitution cannot be entered by the federal courts because Congress may have been in default in exacting from States obedience to its mandate.

The one stark fact that emerges from a study of the history of Congressional apportionment is its embroilment in politics, in the sense of party contests and party interests. The Constitution enjoins upon Congress the duty of apportioning Representatives "among the several States . . . according to their respective Numbers, . . ." Article 1, § 2. Yet, Congress has at times been heedless of this command and not apportioned according to the requirements of the Census. It never occurred to anyone that this Court could issue mandamus to compel Congress to perform its manda-

tory duty to apportion. "What might not be done directly by mandamus, could not be attained indirectly by injunction." . . . Throughout our history, whatever may have been the controlling Apportionment Act, the most glaring disparities have prevailed as to the contours and the population of districts. . . .

To[30] sustain this action would cut very deep into the very being of Congress. Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress. The Constitution has many commands that are not enforceable by courts because they clearly fall outside the conditions and purposes that circumscribe judicial action. . . . The Constitution has left the performance of many duties in our governmental scheme to depend on the fidelity of the executive and legislative action and, ultimately, on the vigilance of the people in exercising their political rights.

Justice Rutledge concurred in the judgment because he believed the Court should exercise its discretion to dismiss for want of equity, on several grounds: that to grant relief would involve the Court in delicate relations with the Congress and the States; that the date (June 10, 1946) was so late as to make redistricting unlikely before the election; and that the election of Representatives on a state-at-large basis would be undesirable.[31]

Justice Black, dissenting in an opinion joined by Justices Douglas and Murphy, opined that the district court had jurisdiction, that a justiciable question was presented, that the appellants had standing to sue,[32] that the popu-

[30] Id., 328 U. S. 556, 2d par., 90 L. ed. 1436, l. col., 2d par.

[31] Id., 328 U. S. 565, 4th par., 90 L. ed. 1442, r. col., 4th par.

[32] Id., 328 U. S. 568, 90 L. ed. 1444, l. col.

lation disparities among the districts violated Article I and the Equal Protection Clause,[33] and that, hence, relief should be afforded. The dissent was clearly predicated upon the assumption that there was no likelihood that Illinois would afford relief to the appellants because the state legislature was apportioned in such a manner that the state legislators had an interest in perpetuating the complained of congressional districting and, furthermore, because a series of suits previously instituted in the state courts challenging the validity of such districting had proved ineffective.[34] Such an assumption is unwarranted in this case because of the probability that the reconstituted Georgia legislature will afford the relief sought by the Appellants. This aspect is treated later in this division of the Brief.

As did their counterparts in *Colegrove*, the Appellants in this case seek the election of Representatives on a state-at-large basis pending redistricting by the state legislature according to population. Obviously, statewide electioneering would be calculated to appeal to the compact majority residing in the easily accessible urban areas and, hence, would result in the neglect of the substantial minority residing in the rural areas. Even the advocates of federal requirements for congressional districting disapprove the election of Representatives on a state-at-large basis. For instance, Representative Celler in a hearing before his House Committee on the Judiciary stated that:[35]

> I have eliminated the idea of drawing district lines here in Washington as impracticable. In view of the

[33] Id., 328 U. S. 570, 90 L. ed. 1445, l. col., 2d par.

[34] Id., 328 U. S. 567, 1st par., 90 L. ed. 1443, r. col., 1st par.

[35] Hearing on June 24, 1959, before Subcommittee No. 2 of the Committee on the Judiciary, House of Representatives, 86th Congress, 1st session, on House Resolutions 73, 575, 8266 and 8473.

requirement of compactness, such elements as economic and social interests of an area, its topography and geography, means of transportation, the desires of the inhabitants as well as of their elected representatives, and finally the political factors should all be considered. Thus I believe State legislature to be far better equipped to determine and evaluate those factors than either the Congress or any national agency it might designate to do so. I look with disfavor upon compelling Representatives to run at large as a means of enforcement; in fact, one of the very purposes behind my bill is to eliminate once and for all Congressmen at large.

The *Colegrove* doctrine has in effect been reaffirmed by this Court through the citation of *Colegrove* as authority in the following cases which avoided intervention in political matters: *Radford v. Gary* (1957), 352 U. S. 991, 1 L. ed. 2d 540, 77 S. Ct. 559; *Kidd v. McCanless* (1956), 352 U. S. 920, 1 L. ed. 2d 157, 77 S. Ct. 223; *South v. Peters* (1950), 339 U. S. 276, 94 L. ed. 834, 70 S. Ct. 461; and *MacDougall v. Green* (1948), 335 U. S. 281, 93 L. ed. 3, 69 S. Ct. 1.

In *Gomillion v. Lightfoot*,[36] decided on November 14, 1960, the plaintiffs, Negroes, attacked the constitutionality of a state statute redefining the boundaries of the City of Tuskegee. The plaintiffs contended that enforcement of the statute, which altered the shape of the city from a square to a twenty-eight-sided figure and removed from the city all save a few Negro voters but no white voters, constituted a discrimination against them in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment and denied them the right to vote in defiance of the Fifteenth Amendment. This Court,

[36] (1960), 364 U. S. 339, 5 L. ed. 2d 110, 81 S. Ct. 125.

speaking through Justice Frankfurter, held that assuming the truth of plaintiffs' allegations, the statute was invalid because violating the Fifteenth Amendment, which forbids a state from passing any law depriving a citizen of his vote because of his race.

The Court in distinguishing *Colegrove* stated that:[37]

> The respondents find another barrier to the trial of this case in *Colegrove v. Green*, 328 U. S. 549, 90 L. ed. 1432, 66 S. Ct. 1198. In that case the Court passed on an Illinois law governing the arrangement of congressional districts within that State. The complaint rested upon the disparity of population between the different districts which rendered the effectiveness of each individual's vote in some districts far less than in others. This disparity came to pass solely through shifts in population between 1901, when Illinois organized its congressional districts, and 1946, when the complaint was lodged. During this entire period elections were held under the districting scheme devised in 1901. The Court affirmed the dismissal of the complaint on the ground that it presented a subject not meet for adjudication. The decisive facts in this case, which at this stage must be taken as proved, are wholly different from the considerations found controlling in *Colegrove*.
>
> That case involved a complaint of discriminatory apportionment of congressional districts. The appellants in *Colegrove* complained only of a dilution of the strength of their votes as a result of legislative inaction over a course of many years. The petitioners here complain that affirmative legislative action deprives them of their votes and the consequent advantages that the ballot affords. When a legislature

[37] Id., 364 U. S. 346, 1st par., 5 L. ed. 2d 116, 1. col., 2d par.

thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment. In no case involving unequal weight in voting distribution that has come before the Court did the decision sanction a differentiation on racial lines whereby approval was given to unequivocal withdrawal of the vote solely from colored citizens. Apart from all else, these considerations lift this controversy out of the so-called "political" arena and into the conventional sphere of constitutional litigation.

. . . While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of their theretofore enjoyed voting rights. That was not *Colegrove v. Green.*

Implicit within this careful distinction between *Colegrove* and *Gomillion* is the obvious desire to preserve *Colegrove.*

We now turn our attention to *Baker v. Carr,*[38] the apparent inspiration for this litigation and the case most heavily relied upon by the Appellants. The complaint in *Baker* alleged that because of population shifts and the failure of the Tennessee legislature to reapportion as required by the State Constitution, the 1901 State Apportionment Act had become obsolete, and denied the plaintiffs equal protection of the laws as guaranteed by the Fourteenth Amendment. In an opinion by Justice Brennan, expressing the views of six members of this Court, it was held that the district court possessed jurisdiction of the subject matter; that a justiciable cause of action was stated upon which the plaintiffs would be entitled to

[38] (1962), 369 U. S. 186, 7 L. ed. 2d 663, 82 S. Ct. 691.

appropriate relief; and that the plaintiffs had standing to challenge the 1901 State Apportionment Act.[39]

This Court in *Baker* elaborately distinguished between the "political question" cases and those appropriate for adjudication, thereby clearly maintaining the vitality of *Colegrove* within the political sphere. The majority opinion defined the contours of the "political question" cases in the following unmistakable terms.[40]

> Our discussion, even at the price of extending this opinion, requires review of a number of political question cases, in order to expose the attributes of the doctrine—attributes which, in various settings, diverge, combine, appear, and disappear in seeming disorderliness. Since that review is undertaken solely to demonstrate that neither singly nor collectively do these cases support a conclusion that this apportionment case is nonjusticiable, we of course do not explore their implications in other contexts. That review reveals that in the Guaranty Clause cases and in the other "political question" cases, *it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States, which gives rise to the "political question."*
>
> We have said that "in determining whether a question falls within (the political question) category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations." *Coleman v. Miller*, 307 U. S. 433, 454-455, 83 L. ed. 1385, 1396, 1397, 59 S. Ct. 972, 122 A. L. R. 695.

---

[39] Id., 369 U. S. 197, last par.

[40] Id., 369 U. S. 210, 2d par., 7 L. ed. 2d 681, r. col., 2d par.

The nonjusticiability of a political question is primarily a function of the separation of powers. Much confusion results from the capacity of the "political question" label to obscure the need for case-by-case inquiry. *Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise, in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.* . . .

We[41] come, finally, to the ultimate inquiry whether our precedents as to what constitutes a nonjusticiable "political question" bring the case before us under the umbrella of that doctrine. A natural beginning is to note whether any of the common characteristics which we have been able to identify and label descriptively are present. We find none: The question here is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government coequal with this Court. Nor do we risk embarrassment of our government abroad, or grave disturbance at home if we take issue with Tennessee as to the constitutionality of her action here challenged. Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. (Emphasis supplied.)

These attributes are synonymous with those present in *Colegrove* and in this case. The "political question" doctrine is characterized by the interrelationships of the federal courts to the other two branches of the Federal Government, and not the relationship of such courts to the

---

[41] Id., 369 U. S. 226, 2d par., 7 L. ed. 2d 691, 1. col., 2d par.

States: The delicate questions involved in these separation of powers contexts were not present in *Baker*, which only involved the federal courts and a state and the well settled criteria developed under the Equal Protection Clause.

The Constitution has clearly conferred upon Congress the exclusive authority and responsibility to secure fair representation by the States in the popular House and left to that House the determination of whether states have fulfilled their responsibility. If a state selects its Representatives by a mode that defies the direction of Congress for selection by districts, the House, in the exercise of its power to judge the qualifications of its own members, may reject the delegation of Representatives.

In *Wood*, *Colegrove* and *Baker*, this Court has clearly announced its judgment that claims of the nature here presented are not appropriate for adjudication.

B. The Abstention Doctrine.

1. Georgia's New Political Climate.

The impact of *Baker v. Carr* has created a dramatic transformation in the political life of Georgia.

On April 28, 1962, a three-judge district court[42] held in *Sanders v. Gray*[43] that Georgia's county-unit method of tabulating the vote cast in party primaries for the nomination of candidates for the Governorship and other statewide offices was unconstitutional by virtue of the severe dilution of the urban vote. Consequently, on September 12, 1962, a Democratic candidate was nominated for the office of Governor in a primary where all votes were tabu-

---

[42] Composed of Circuit Judges Tuttle and Bell and District Judge Hooper.

[43] (D. C.-N. D.-1962), 203 F. Supp. 158.

lated equally. This candidate was elected Governor by the people of Georgia in the General Election held on November 6, 1962. It is a matter of common knowledge in Georgia that the Governor exercises great influence upon the activity of the General Assembly of Georgia.

On May 25, 1962, a three-judge district court[44] held in *Toombs v. Fortson*[45] that the General Assembly of Georgia, composed of a Senate and House of Representatives, was unconstitutionally constituted in that neither House thereof was apportioned according to population. The court further held that the General Assembly must be reconstituted so that at least one House thereof will have been reapportioned according to population prior to the convening of the General Assembly in January, 1963.[46] The court concluded by stating that:[47]

> Giving full consideration to all of these factors,[48] and recognizing the right of the plaintiffs to have their constitutional rights vindicated at the earliest practicable moment, while at the same time according every presumption of good faith to, and affording a reasonable opportunity to act to, the responsible State officials and the present General Assembly now that

---

[44] Composed of Circuit Judges Tuttle and Bell and District Judge Morgan, the same three judges composing the lower court in this case.

[45] (D. C.-N. D.-1962), 205 F. Supp. 248.

[46] The General Assembly convenes in regular session on the second Monday in January of each year. Par. III, Sec. IV, Art. III, Ga. Const.; Ga. Code Ann., Sec. 2-1603.

[47] 205 F. Supp. 258, r. col., last par.

[48] See 205 F. Supp. 258, l. col., (7). These factors converged in the determination that it would be feasible for the General Assembly to convene in extraordinary session, after the conclusion of the state primaries in September, 1962 but prior to the holding of the General Election on November 6, 1962, for the purpose of reapportioning itself to conform to the criteria prescribed by the court.

the rights of the parties have been declared, we have concluded that we should enter no injunction at this time. We have concluded that we should postpone any further proceedings in this matter until the State has had a reasonable opportunity to reconstitute the Legislature so as to meet the constitutional standards here laid down prior to the January, 1963, session. If it appears that the Legislature has taken such action as brings the composition of the General Assembly within such constitutional standards, then this Court need take no further action. If, on the other hand, the Legislature does not act, or if its action does not meet constitutional standards, then we will be under a clear duty to take such action as is necessary and feasible to accord plaintiffs their rights.

On September 14, 1962, the Governor of Georgia issued his Proclamation[49] convening the General Assembly in extraordinary session on September 27, 1962, for the purpose *inter alia*, of considering and enacting laws relating to the reapportionment of the Senate within the requirements of *Toombs v. Fortson*. This convening of the extraordinary session immediately followed the conclusion of the state primary process in September for the nomination of party candidates for the public offices filled in the General Election held on November 6, 1962.

Upon convening, the General Assembly expeditiously went about the business of considering the reconstitution of the Senate, which culminated on October 5, 1962, in the enactment into law of Act No. 1[50] apportioning the membership of the Senate entirely on a population basis as required by *Toombs v. Fortson*. Thereafter, special sena-

---

[49] Ga. Laws, Sept.-Oct. 1962, Extra Sess., pp. 3-5. A copy of the Proclamation is set forth in Appendix A, infra, pp. 47-48.

[50] Ga. Laws, Sept.-Oct. 1962, Extra Sess., pp. 7-31. A copy of the Act is set forth in Appendix B, infra, pp. 49-75.

torial primaries were held for the nomination of party candidates for membership in the reconstituted Senate, and at the General Election held on November 6, 1962, senators were elected by the people to represent the newly defined senatorial districts.

It is interesting to note that Appellant Wesberry was elected as the Senator to represent the 37th Senatorial District, and that it is a matter of common knowledge that during his campaign he promised that "if elected he will promptly introduce a bill to reapportion the 5th Congressional District in a way that will give Fulton County its own congressional seat."[51] He has not previously been elected to membership in the General Assembly.

The membership of the House of Representatives of the General Assembly is apportioned, after each federal census, among Georgia's 159 counties as follows: "To the eight counties having the largest population, three representatives each; to the thirty counties having the next largest population, two representatives each; and to the remaining counties, one representative each."[52] Consequently, the House is composed of 205 Representatives, 84 of whom represent the 38 most populous counties. While the House is apportioned largely according to geography, it is nevertheless clear that the urban areas possess a powerful voice in the House.

These factors compellingly illustrate the likelihood, recognized by the lower court,[53] that the relief sought by

---

[51] *The Atlanta Journal*, Thursday, Oct. 11, 1962, p. 17, 3d col., 2d par.

[52] Sec. III, Art. III, Ga. Const.; Ga. Code Ann., Ch. 2-15. The membership of the House of Representatives elected for the 1963-64 term and to be elected for subsequent terms has been reapportioned on the basis of the 1960 federal census. Ga. Laws, 1961, p. 111; Ga. Code, Sec. 47-101.

[53] Jurisdictional Statement, p. 31, 3d par., 206 F. Supp. 282, r col. (7).

Appellants will be afforded by the reconstituted General Assembly. This likelihood is further intensified by the election of Appellant Wesberry to the State Senate upon a pledge of congressional redistricting. He may reasonably anticipate the cooperation of the Governor, his fellow Senators, and a substantial representation in the House, in securing the congressional redistricting he seeks in this case.

2. Federal-State Relations.

The determination which the Appellants would have this Court make lies in an extremely sensitive area involving the relationship of the powers of the National Government to those of the States. Here, of all places, the federal courts should act cautiously and with great circumspection and should avoid any action where relief may be furnished by the State. This philosophy of comity governing federal-state relations has been applied by this Court in myriads of contexts.

In *Great Lakes Dredge & Dock Company v. Huffman*,[54] the petitioners instituted in federal court a declaratory judgment action seeking to have a state law as applied to them and their employees declared unconstitutional. The action was dismissed and on appeal to this Court the judgment was affirmed in a unanimous opinion stating in part that:[55]

> This Court has recognized that the federal courts, in the exercise of the sound discretion which has traditionally guided courts of equity in granting or withholding the extraordinary relief which they may afford, will not ordinarily restrain state officers from

---

[54] (1943), 319 U. S. 293, 87 L. ed. 1407, 63 S. Ct. 1070.

[55] Id., 319 U. S. 297, last par., 87 L. ed. 1410, r. col., last par.

collecting state taxes where state law affords an adequate remedy to the taxpayer. *Matthews v. Rodgers*, 284 U. S. 521, 76 L. ed. 447, 52 S. Ct. 217. This withholding of extraordinary relief by courts having authority to give it is not a denial of the jurisdiction which Congress has conferred on the federal courts, or of the settled rule that the measure of inadequacy of the plaintiff's legal remedy is the legal remedy afforded by the federal not the state courts. *Stratton v. St. Louis Southwestern R. Co.*, 284 U. S. 530, 533, 534, 76 L. ed. 465, 468, 469, 52 S. Ct. 222; *Di Giovanni v. Camden F. Ins. Asso.*, 296 U. S. 64, 69, 80 L. ed. 47, 51, 56 S. Ct. 1. On the contrary, it is but a recognition that the jurisdiction conferred on the federal courts embraces suits in equity as well as at law, and that a federal court of equity, which may in an appropriate case refuse to give its special protection to private rights when the exercise of its jurisdiction would be prejudicial to the public interest (*United States ex rel. Greathouse v. Dern*, 289 U. S. 352, 359, 360, 77 L. ed. 1250, 1254, 1255, 53 S. Ct. 614; *Virginian R. Co. v. System Federation, R. E. D.*, 300 U. S. 515, 549-553, 81 L. ed. 789, 800, 802, 57 S. Ct. 592), should stay its hand in the public interest when it reasonably appears that private interests will not suffer. See *Pennsylvania v. Williams*, 294 U. S. 176, 185, 79 L. ed. 841, 847, 55 S. Ct. 380, 96 A. L. R. 1166, and cases cited.

It is in the public interest that federal courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless obstruction of the domestic policy of the states.

"The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, re-

quire that such relief should be denied in every case where the asserted federal right may be preserved without it. Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved." *Matthews v. Rodgers*, supra (284 U. S. 525, 526, 76 L. ed. 451, 452, 52 S. Ct. 217).

The[56] statutory authority to render declaratory judgments permits federal courts by a new form of procedure to exercise the jurisdiction to decide cases or controversies, both at law and in equity, which the Judiciary Acts had already conferred. *Aetna L. Ins. Co. v. Haworth*, 200 U. S. 227, 81 L. ed. 617, 57 S. Ct. 461, 108 A. L. R. 1000. Thus the Federal Declaratory Judgments Act (Act of June 14, 1934, 48 Stat. 955, c. 512, as amended, 28 U. S. C. A., § 400, 8 F. C. A., title 28, § 400), provides in § 1 that a declaration of rights may be awarded although no further relief be asked, and in § 2 that "further relief based on a declaratory judgment or decree may be granted whenever necessary or proper."

The jurisdiction of the district court in the present suit, praying an adjudication of rights in anticipation of their threatened infringement, is analogous to the equity jurisdiction in suits quia timet or for a decree

---

[56] Id., 319 U. S. 299, last par., 87 L. ed. 1412, 1. col., 2d par. As to this aspect of the opinion, see also: *Public Affairs Press v. Rickover* (1962), 369 U. S. 111, 112, 2d par., 7 L. ed. 2d 606, 82 S. Ct. 582; and *Eccles v. Peoples Bank* (1948), 333 U. S. 426, 431, 2d par., 92 L. ed. 784, 789, 1. col., 2d par., 68 S. Ct. 641, reh. den. (1948), 333 U. S. 877, 92 L. ed. 1153, 68 S. Ct. 900.

quieting title. See *Nashville, C. & St. L. R. Co. v. Wallace*, 288 U. S. 249, 263, 77 L. ed. 730, 735, 53 S. Ct. 345, 87 A. L. R. 1191. Called upon to adjudicate what is essentially an equitable cause of action, the district court was as free as in any other suit in equity to grant or withhold the relief prayed, upon equitable grounds. The Declaratory Judgments Act was not devised to deprive courts of their equity powers or of their freedom to withhold relief upon established equitable principles. It only provided a new form of procedure for the adjudication of rights in conformity to those principles. The Senate committee report on the bill pointed out that this Court could, in the exercise of its equity power, make rules governing the declaratory judgment procedure. S. Rep. No. 1005, 73rd Cong., 2d Sess., p. 6. And the House report declared that "large discretion is conferred upon the courts as to whether or not they will administer justice by this procedure." H. R. Rep. No. 1264, 73rd Cong., 2d Sess., p. 2; and see *Brillhart v. Excess Ins. Co.*, 316 U. S. 491, 494, 86 L. ed. 1620, 1624, 62 S. Ct. 1173; *Borchard, Declaratory Judgments*, 2d ed., p. 312.

Martin v. Creasy[57] involved an action instituted in federal court, by owners of property abutting a section of highway which, under authority of a Pennsylvania statute, was to be designated as a "limited access highway," to which owners of abutting property had no right of ingress or egress except as may be provided by the authorities responsible for the highway. Claiming that the enforcement of the statute would deprive them of their property without due process of law, since the statute did not provide compensation for loss of access to the highway, the plaintiffs asked for injunctive relief and for a judgment declaring the statute unconstitutional. In equita-

[57] (1959), 360 U. S. 219, 3 L. ed. 2d 1186, 79 S. Ct. 1034.

ble proceedings in the state courts it was found that the state statute provided a complete procedure to guard and protect the plaintiffs' constitutional rights at all times. Nevertheless, the district court granted the plaintiffs relief, believing that they might be irreparably harmed during the period required to determine their rights in the state courts.

On appeal, this Court reversed holding in part that:[58]

> The circumstances which should impel a federal court to abstain from blocking the exercise by state officials of their appropriate functions are present here in a marked degree. The considerations which support the wisdom of such abstention have been so thoroughly and repeatedly discussed by this Court as to require little elaboration. *Railroad Com. v. Pullman Co.*, 312 U. S. 496, 85 L. ed. 971, 61 S. Ct. 643; *Chicago v. Fieldcrest Dairies*, 316 U. S. 168, 86 L. ed. 1355, 62 S. Ct. 986; *Spector Motor Service, Inc. v. McLaughlin*, 323 U. S. 101, 89 L. ed. 101, 65 S. Ct. 152; *A. F. of L. v. Watson*, 327 U. S. 582, 90 L. ed. 873, 66 S. Ct. 761; *Government Employees v. Windsor*, 353 U. S. 364, 1 L. ed. 2d 894, 77 S. Ct. 838. See also: *Alabama Public Service Com. v. Southern R. Co.*, 341 U. S. 341, 95 L. ed. 1002, 71 S. Ct. 762. Reflected among the concerns which have traditionally counseled a federal court to stay its hand are the desirability of avoiding unseemly conflict between two sovereignties, the unnecessary impairment of state functions, and the premature determination of constitutional questions. All those factors are present here.

For other cases applying the doctrine of equitable abstention, see: *Harrison v. NAACP* (1959), 360 U. S. 167, 176, 2d par., 3 L. ed. 2d 1152, 1158, l. col. 2d par., 79 S. Ct.

---

[58] Id., 360 U. S. 224, 2d par., 3 L. ed. 2d 1189, r. col., last par.

1025; *Louisiana Power & Light Co. v. City of Thibodaux* (1959), 360 U. S. 25, 27, 1st par., 3 L. ed. 2d 1058, 1061, l. col., last par., 79 S. Ct. 1070, reh. den. (1959), 360 U. S. 940, 3 L. ed. 2d 1552, 79 S. Ct. 1442; *City of Meridian v. Southern Bell Tel. & Tel. Co.* (1959), 358 U. S. 639, 640, last par., 3 L. ed. 2d 562, 563, r. col., 2d par., 79 S. Ct. 455; *Albertson* v. *Millard* (1953), 345 U. S. 242, 245, 2d par., 97 L. ed. 983, 985, r. col., 3d par., 73 St. Ct. 600; *Burford v. Sun Oil Co.* (1943), 319 U. S. 315, 317, last par., 87 L. ed. 1424, 1426, l. col., 2d par., 63 S. Ct. 1098, reh. den. (1943), 320 U. S. 214, 87 L. ed. 1851, 63 S. Ct. 1442; *Beal v. Missouri Pacific Railroad Corp.* (1941), 312 U. S. 45, 50, 1st par., 85 L. ed. 577, 580, l. col., 1st par., 61 S. Ct. 418; and *Giovanni v. Camden Fire Insurance Assn.* (1935), 296 U. S. 64, 73 last par., 80 L. ed. 47, 53, r. col., last par., 56 S. Ct. 1. See also Justice Clark's concurring opinion in *Baker v. Carr*, 369 U. S. 258, last par.

These cases reflect a sound and salutary policy derived from our federalism for the purpose of maintaining a balanced and harmonious relationship between federal and state authority. The considerations that prevailed in these cases for avoiding the hazards of serious disruption by federal courts of state government or needless friction between federal and state authority are all the more appropriate in this case where there is a strong likelihood that the issues will be resolved by state legislative action. Under such circumstances, the lower court did not abuse its discretion in dismissing the Complaint.[59]

[59] *Martin v. Creasy* (1959), 360 U. S. 219, 225, 3 L. ed. 2d 1186, 1190, r. col., 79 S. Ct. 1034; *Alabama Pub. Ser. Com. v. Southern Railway Co.* (1951), 341 U. S. 341, 95 L. ed. 1002, 71 S. Ct. 762, "The motions of the appellee that the mandates of these cases provide for retention by the District Court of jurisdiction pending further proceedings are denied" (1951), 341 U. S. 946, 95 L. ed. 1370, 71 S. Ct. 1011; *Burford v. Sun Oil Co.* (1943), 319 U. S. 315, 334, 2d par., 87 L. ed. 1424, 1435, l. col., 2d par., 63 S. Ct. 1098, reh. den. (1943), 320 U. S. 214, 87 L. ed. 1851, 63 S. Ct. 1442; *Hastings v. Shelby Oil & Gas Co.* (1943), 319 U. S. 348.

C. Conclusion.

The Defendants' Exhibits[60] and the findings of the lower court[61] clearly illustrate that the form of congressional districting complained of in Georgia is not exotic, but epitomizes a national practice. Furthermore, the figures in these Exhibits do not tell the whole story because they do not show the gerrymander, a common method of districting in many states. This big picture is significant because any direct change by the Court in this area would create a vast national impact. It means that if the claims of the Appellants are legally justified at this time, then the very existence of the present membership of the National House of Representatives is placed in jeopardy.

However, in *Baker v. Carr* this Court has set in motion a great engine designed to give the urban areas of the Nation a far greater influence in their state legislatures; an influence which obviously will result in the reshaping of congressional districts strictly according to population. Through this reaction the Appellants will achieve their ends. But, here they seek to catapult this Court into an area constitutionally insulated against judicial interference and involving the most sensitive and delegate relationships with the Congress. In recognition of this, the Court has wisely preserved *Colgrove* and is properly leaving congressional redistricting to reapportioned state legislatures.

---

87 L. ed. 1443, 63 S. Ct. 1114, reh. den. (1943), 320 U. S. 214, 87 L. ed. 1851, 63 S. Ct. 1442; *Great Lakes Dredge & Dock Co. v. Huffman* (1943), 319 U. S. 293, 301, last par., 87 L. ed. 1407, 1413, l. col., 2d par., 63 S. Ct. 1070; and *Beal v. Missouri Pacific Railroad Corp.* (1941), 312 U. S. 45, 51, 3d par., 85 L. ed. 577, 580, r. col., 3d par., 61 S. Ct. 418.

[60] Defendants' Exhibits Nos. 1, 2, 3, 4 and 8 (adm. R. 65).

[61] Jurisdictional Statement, p. 27, 2d par., 206 F. Supp. 280, l. col., 2d par.

Georgia has reconstituted its legislature according to federal decree thereby creating the likelihood of congressional redistricting. Furthermore, Appellant Wesberry through his election as a state senator, is in a unique position to effectively achieve within the state legislative framework the relief he here seeks.

In view of these considerations, the judgment of the lower court should be affirmed.

II.

THIS APPEAL SHOULD BE DISMISSED ON THE GROUND THAT THE MATTERS IN CONTROVERSY HAVE BECOME MOOT OR THAT NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED.

A. Mootness.

The immediate object of the Complaint in this case was to require congressional redistricting prior to the holding of the General Election on November 6, 1962, or, in the alternative, to require the election of Representatives on a state-at-large basis in the General Election. The Election has now been held and the Representatives of the people of Georgia have been elected for the succeeding two years and, therefore, the immediate controversy between the parties has become moot. There are no acts to restrain at the present time and the other relief sought by the Appellants would have no immediate effect because Georgia's congressional representation has been fixed for the 1963-64 term.

Nevertheless, the Appellants attempt to maintain an active controversy by seeking injunctive and declaratory relief aimed at the General Election to be held on No-

vember 3, 1964, and subsequent elections. However, the seeking of this additional relief does not rescue the appeal from its newly acquired theoretical status because the appeal now only presents an abstract question divorced from any presently existing right or actual controversy. This mootness is further intensified by the probability that the state legislature will afford the relief sought, and the possibility that the Appellants may be ineligible to vote in subsequent general elections through a change in residence or otherwise.[62] What the Appellants really seek at this time is an advisory opinion. Several cases are apposite to illustrate this point.

United Public Workers v. Mitchell[63] concerned an action to enjoin the members of the United States Civil Service Commission from enforcing against plaintiffs a certain provision of the Hatch Act, as being repugnant to the Federal Constitution, and for a judgment declaratory of the unconstitutionality of such provision. Certain of the the plaintiffs had joined in the institution of the action because they desired to act contrary to the rule against political activity, although they had not violated it.[64] In other words, they merely presented an abstract question. In responding to such abstraction, this Court stated that:[65]

> As is well known the federal courts established pursuant to Article III of the Constitution do not render advisory opinions. For adjudication of constitutional issues "concrete legal issues, presented in

---

[62] This possibility is analogous to the possibility that a plaintiff may not be a candidate in future elections. *Michael v. Cockrell* (C. C. A.—4th—1947), 161 F. 2d 163, 164, r. col., 2d par.

[63] (1947), 330 U. S. 75, 91 L. ed. 754, 67 S. Ct. 556.

[64] Id., 330 U. S. 88, 91 L. ed. 766, l. col.

[65] Id., 330 U. S. 89, 1st par., 91 L. ed. 766, r. col., 2d par.

actual cases, not abstractions," are requisite. This is as true of declaratory judgments as any other field. These appellants seem clearly to seek advisory opinions upon broad claims of rights protected by the First, Fifth, Ninth and Tenth Amendments to the Constitution. . . .

The power of courts, and ultimately of this Court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. We can only speculate as to the kinds of political activity the appellants desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication. It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interferences upon the other.

The Constitution allots the nation's judicial power to the federal courts. Unless these courts respect the limits of that unique authority, they intrude upon powers vested in the legislative or executive branches. Judicial adherence to the doctrine of the separation of powers preserves the courts for the decision of issues, between litigants, capable of effective determination. Judicial exposition upon political proposals is permissible only when necessary to decide definite issues between litigants. When the courts act continually within these constitutionally imposed boundaries of their power, their ability to perform their function as a balance for the people's protection against abuse of power by other branches of government remains unimpaired. Should the courts seek to

expand their power so as to bring under their jurisdiction ill-defined controversies over constitutional issues, they would become the organ of political theories. Such abuse of judicial power would properly meet rebuke and restriction from other branches. By these mutual checks and balances by and between the branches of government, democracy undertakes to preserve the liberties of the people from excessive concentrations of authority. No threat of interference by the Commission with rights of these appellants appears beyond that implied by the existence of the law and the regulations. *Watson v. Buck*, supra (313 U. S. p. 400, 85 L. ed. 1423, 61 S. Ct. 962, 136 A. L. R. 1426). We should not take judicial cognizance of the situation presented on the part of the appellants considered in this subdivision of the opinion. These reasons lead us to conclude that the determination of the trial court, that the individual appellants, other than Poole, could maintain this action, was erroneous.

In *Communist Party v. Subversive Activities Control Board*,[66] this Court again recognized that "Merely potential impairment of constitutional rights under a statute does not of itself create a justiciable controversy in which the nature and extent of those rights may be litigated."[67]

Richardson v. McChesney[68] concerned a writ of error to review a state court decree refusing to require a state official, when certifying the names of nominees for Congress to the clerks of the various county courts, to proceed

---

[66] (1961), 367 U. S. 1, 6 L. ed. 2d 625, 81 S. Ct. 1357. See also *International Longshoremen's and Warehousemen's Union v. Boyd* (1954), 347 U. S. 222, 223, last par., 98 L. ed. 650, 652, 1. col., last par., 74 S. Ct. 447.

[67] 367 U. S. 71, 2d par., 6 L. ed. 2d 674, 1. col., last par.

[68] (1910), 218 U. S. 487, 54 L. ed. 1121, 31 S. Ct. 43;

under the State Congressional Apportionment Act of 1882, rather than under the State Apportionment Act of 1890. The appellant contended that the 1890 Act was invalid because it failed to conform to federal congressional apportionment acts requiring that congressional districts be of contiguous territory containing as nearly as practicable an equal number of inhabitants.

Without considering the merits, this Court dismissed the writ of error, stating in part that:[69]

> The matter which the defendant McChesney, as secretary of the commonwealth of Kentucky, is to be prohibited from doing, relates solely to an election to be held in November, 1908, and the thing which he is to be required to do relates only to the same election. The election to be affected by a decree, according to the prayer of the bill, has long since been held, and the members of Congress were, in November, 1908, elected under the apportionment act of 1890. They were, as we may judicially know, admitted to the respective seats, and, as we may also take notice, their successors have been elected according to the same scheme of apportionment. The thing sought to be prevented has been done, and cannot be undone by any judicial action. Under such circumstances there is nothing but a moot case. *Mills v. Green*, 159 U. S. 651, 40 L. ed 293, 16 Sup. Ct. Rep. 132; *Jones v. Montague*, 194 U. S. 147, 48 L. ed. 913, 24 Sup. Ct. Rep. 611.
>
> The duty of the court is limited to the decision of actual pending controversies, and it should not pronounce judgment upon abstract questions, however such opinion might influence future action in like circumstances.

---

[69] Id., 218 U. S. 492, 3d par., 54 L. ed. 1122, 1. col., last par.

This dismissal is significant because the appellant had alleged that the 1890 Act violated the requirements of the federal congressional reapportionment acts and, hence, the alleged violation would recur at each election of Representatives so long as the acts remained in force. Nevertheless, this Court determined the issue to be moot.

The decision in *Mills v. Green*,[70] relied upon in *Richardson*, stated in part that:[71]

> The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal.

In *Fortson v. Cook*[72] and *Furman v. Duckworth*,[73] the appellants sought declaratory and injunctive relief aimed at the invalidation of Georgia's county unit system for tabulating votes in party primaries. This Court in dismissing the appeals cited *United States v. Anchor Coal Company*[74] as authority for dismissal on the ground of

---

70 (1895), 159 U. S. 651, 40 L. ed. 293, 16 S. Ct. 132.

71 Id., 159 U. S. 653, last par., 40 L. ed. 293, r. col., last par.

72 (1946), 329 U. S. 675, 91 L. ed. 596, 67 S. Ct. 21, reh. den. (1946), 329 U. S. 829, 91 L. ed. 703, 67 S. Ct. 206.

73 Id.

74 (1929), 279 U. S. 812, 73 L. ed. 971, 49 S. Ct. 262.

mootness, irrespective of the obvious application of the county unit system to future primaries.[75]

In view of these authorities, it is clear that this appeal no longer presents a controversy susceptible of judicial determination.

B. No Substantial Federal Question.

In *Remmey v. Smith*,[76] the plaintiffs sought to have the Pennsylvania Apportionment Act of 1921 declared unconstitutional and to compel the state legislature to reapportion state representative and senatorial districts. The three-judge district court held that the suit was premature and dismissed for want of equity. In its opinion, the court stated in part that:[77]

> The determination which the plaintiffs would have us make lies in that extremely sensitive field, the relation of the powers of the National Government to those of the States. Here, of all places, a federal court should tread warily and with great circumspection and should forego any action where relief may be furnished by the State. This court should not intervene where an apparent, but untried, remedy may lie in the Courts of the Commonwealth of Pennsylvania. Those Courts may declare the present operation of the Apportionment Act of 1921 to be unconstitutional under the Pennsylvania Constitution. . . . *Moreover, and this we deem to be a most cogent circumstance, the 1951 General Assembly of the Commonwealth of Pennsylvania is in session. This is the*

---

[75] This point was touched upon by Justice Rutledge in his opinion. See 329 U. S. 677, 2d par., 91 L. ed. 597, r. col., last par.

[76] (D. C.—E. D. Pa.—1951), 102 F. Supp. 708.

[77] Id., 102 F. Supp. 711, l. col., 2d par.

first General Assembly convened following the United States decennial census of 1950. The 1951 General Assembly has the opportunity to act in respect to this most important matter and, if it does, may pass a reapportionment act which will meet every constitutional requirement. Under these circumstances action by this court at this time would, at best, be premature. (Emphasis supplied.)

Upon appeal, this Court entered a *per curiam* opinion stating in part that "The motion to dismiss is granted and the appeal is dismissed for the want of a substantial Federal question."[78]

The dismissal granted by this Court in *Remmey* is even more appropriate in this case because it involves congressional redistricting in contrast with state legislative reapportionment and, furthermore, because there is a stronger likelihood in this case that the state legislature will afford the relief sought by the Appellants.

CONCLUSION.

The Judgment of the United States District Court for the Northern District of Georgia, sought to be reviewed in this cause, should be affirmed on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument; or, in the alternative, the appeal in this cause should be dismissed, (a) on the ground that the matters in controversy in this action and upon this appeal have become abstract and moot by virtue of the holding of the General Election on November 6, 1962, and the election therein of the Representatives of the people of Georgia in

---

[78] *Remmey v. Smith* (1952), 342 U. S. 916, 96 L. ed. 685, 72 S. Ct. 368.

the House of Representatives of the Congress of the United States, or, (b) on the ground that it presents no substantial federal question.

Respectfully submitted,

EUGENE COOK,
The Attorney General,

PAUL RODGERS,
Assistant Attorney General,

DONALD E. PAYTON,
Assistant Attorney General,
Counsel for Appellees.

P. O. Address:
132 Judicial Building,
40 Capitol Square,
Atlanta 3, Georgia.

November 8, 1962.

APPENDIX A.

A PROCLAMATION BY HIS EXCELLENCY GOVERNOR S. ERNEST VANDIVER OF THE STATE OF GEORGIA CONVENING THE GENERAL ASSEMBLY OF GEORGIA IN EXTRAORDINARY SESSION

Whereas: On May 25, 1962, in the case entitled Toombs vs. Fortson, et al., a three-judge Federal Court held and declared that the General Assembly of Georgia as presently constituted "fails to meet Constitutional requirements" in that neither House thereof is apportioned according to population; and

Whereas: In a supplemental opinion rendered on September 5, 1962, the Court further held that the General Assembly must be reconstituted so that at least one House thereof will have been reapportioned according to population "coincident with the convening of the General Assembly" in January, 1963, or reapportionment would be effectuated by judicial decree; and

Whereas: As pointed out by the Court, such reapportionment may be achieved most feasibly with respect to the State Senate; and

Whereas: The people of Georgia, acting by and through their General Assembly, possess the innate capability of resolving their governmental problems without the intervention of the federal judiciary; and

Whereas: The consideration of comity arising from the delicate problems of federal-state relations under the federal system demand that this grave issue be resolved by the people's chosen representatives in keeping with the

Democratic principles incident to a Republican form of government; and

Whereas: Other urgent problems have also arisen concerning administration under the State Toll Bridge Authority Act which problems require immediate legislative consideration; and

Now, therefore: Upon consideration of the premises stated, and under and by virtue of the power and authority vested in me by the Constitution of Georgia, Article V, Section I, Paragraph XII, I, S. Ernest Vandiver, Governor of Georgia, do hereby convoke and call a meeting of the General Assembly of Georgia in extraordinary session at 11:00 A. M., Eastern Standard Time, on Thursday, September 27, 1962, for the purposes of considering and enacting laws and proposed constitutional amendments by way of revision, repeal, supersession, enactment, amendment or otherwise relating to (1) nomination and election of Senators, the composition and reapportionment of the Senate; the creation, composition, reconstitution and rearrangement of Senatorial Districts; (2) the Constitutional corporate existence, powers and duties of the State Toll Bridge Authority, as created by an Act approved March 2, 1953 (Ga. Laws 1953, Jan. and Feb. Sess., p. 302), all of which are found and concluded by me to be of sufficient importance to demand the necessity of such extraordinary session of the General Assembly.

Given under my hand and the Great Seal of the State of Georgia, at the City of Atlanta, on this 14th day of September, in the year of Our Lord, one thousand nine hundred and sixty-two.

/s/ S. Ernest Vandiver
Governor

By the Governor

/s/ Ben W. Fortson, Jr.
Secretary of State

APPENDIX B.

REAPPORTIONMENT OF SENATE.

Code §§ 34-1904, 34-1914 and 47-102 Amended.

No. 1 (Senate Bill No. 1).

An Act to provide for the reapportionment of the State Senate; to amend an Act, relating to Senatorial Districts of the State, approved February 1, 1946 (Ga. L. 1946, p. 42), as amended by an Act approved February 14, 1950 (Ga. L. 1950, p. 165), so as to remove the provisions providing for the furnishing of Senators; to repeal an Act entitled "An Act to regulate political primary elections for the nomination of candidates for the State Senate; to provide that such primary elections shall be held in the various Senatorial Districts only in the County entitled to furnish the nominees under the rotation system; and for other purposes," approved March 23, 1939 (Ga. L. 1939, p. 311); to provide the procedure for the nomination and election of State Senators for the 1963-64 Term; to amend Code section 34-1904, relating to ballots in elections other than primary elections, as amended, so as to change the provisions relating to members of the State Senate; to provide for the procedure for future nominations of members of the State Senate; to amend an Act, relating to county primaries, approved February 20, 1956 (Ga. L. 1956, p. 159), as amended, so as to remove the provisions relating to members of the State Senate; to amend an Act providing for absentee voting by members of the Military, approved February 26, 1953 (Ga. L. 1953, Jan.-Feb. Sess., p. 244), as amended, so as to provide the date on which future primaries for the nomination of State Senators shall be held; to amend an Act, relating to ballots in primary elections and

the qualifying of candidates in primary elections, approved March 12, 1941 (Ga. L. 1941, p. 324), so as to change the provisions relating to qualifying; to amend Code section 47-102, relating to State Senatorial Districts, as amended, so as to provide for the composition and number of State Senatorial Districts and the number of Senators; to provide for future reapportionment of the State Senate; to provide requirements for residence; to provide for the suspension of certain laws and the applicability of certain provisions of this Act; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An Act relating to the Senatorial Districts of the State of Georgia, approved February 1, 1946 (Ga. L. 1946, p. 42), as amended by an Act approved February 14, 1950 (Ga. L. 1950, p. 165), is hereby amended by striking section 2 which reads as follows:

"Section 2. The first county named in each of the above sections shall furnish the senator for the next general election and after that the counties in the order named above shall furnish the senator for that district. In all senatorial districts of the State of Georgia comprised of two (2) counties, the county having a population according to the census of 1940 or any future census of more than double the population of the other county in said district shall furnish the senator for two (2) successive terms at the expiration of which the smaller county shall furnish the Senator for one (1) term. The county having the population of more than double that of the other county as aforesaid shall furnish the senator for the next general election of 1950. In the general election of 1952 the smaller county shall furnish the senator and in the general election of 1954 and 1956 the county having the larger population as aforesaid shall furnish the senator and said order

of furnishing the senator from such districts shall continue the manner aforesaid."

in its entirety.

Section 2. An Act entitled: "An Act to regulate political primary elections for the nomination of candidates for the State Senate; to provide that such primary elections shall be held in the various Senatorial Districts only in the county entitled to furnish the nominees under the rotation system; and for other purposes," approved March 23, 1939 (Ga. L. 1939, p. 311), is hereby repealed in its entirety.

Section 3. Senatorial candidates nominated in the State Primary of September 12, 1962, or in the run-off Primary of September 26, 1962, or in any earlier county primary shall not be placed on the General Election ballot by virtue of such nomination, but any political party desiring to nominate candidates by primary for election to the State Senate for the 1963-64 term shall hold a special senatorial primary on October 16, 1962, and with respect to those Districts in which no candidate receives a majority of the total vote cast in such primary, such political party shall hold a runoff primary between the top two candidates therein on October 23, 1962. Each candidate for the State Senate, or the proper authority of the party nominating him, shall file notice of his candidacy with the Secretary of State by October 25, 1962, and the names of all such candidates in each District shall be placed on the ballot of such District for the general election on November 6, 1962. Provided that any candidate who was not nominated in such a special senatorial primary in addition to the foregoing, shall file a petition, conforming to all the requirements of Georgia Code section 34-1904, as amended, not in conflict herewith, with the Secretary of State, signed by not less than five per cent (5%) of the registered voters of the District in which he is a candidate. The State

Executive Committee of each party holding a primary in any District under the foregoing provisions shall adopt rules providing for uniform opening and closing dates for such primary, for uniform qualifying fees, run-over primaries, and all other rules or regulations needful or necessary to the conduct of such primary.

Any person offering as a candidate in the aforesaid Primary on October 16, 1962, in a District composed of one county or less must have been a resident and a registered voter of such District for the twelve (12) months immediately preceding said date. Any person offering as a candidate in the aforesaid Primary on October 16, 1962, in a District composed of more than one county must have been a resident and a registered voter of the particular county in said District from which he offers as a candidate for the twelve (12) months immediately preceding said date.

Section 4. Code section 34-1904, relating to ballots in elections other than primary elections, as amended, particularly by Acts approved October 2, 1948 (Ga. L. 1948, Ex. Sess., p. 3), and March 6, 1962 (Ga. L. 1962, Vol. I, p. 618), is hereby amended by striking paragraph (b) thereof and by substituting in lieu thereof the following:

"(b) It shall not be the duty of said officers to place the names of any candidates on said official ballots unless notice of their candidacy shall be given in the following manner: All candidates for national and State offices, except Justices of the Peace and candidates for membership in the House of Representatives, but including candidates for membership in the State Senate, members of the General Assembly being hereby declared to be State Officers, or the proper authority of the political party nominating them, shall file notice of their candidacy, giving their names and the offices for which they are candidates, with the Secretary of State, at least forty-five (45) days prior to the regular election, except in cases where a second

primary election is necessary. The names of such candidates shall be filed with the Secretary of State as soon as possible after the determination of the result of said second primary, but no later than five (5) days after such second primary. All candidates for county offices and all candidates for membership in the House of Representatives of the General Assembly, either by themselves or by the proper authority of the political party nominating them, shall file notice of their candidacy with the Ordinary of the County at least forty-five (45) days before the regular election. Provided that, if any such candidate listed herein shall not be the nominee of a political party by primary held for such office in the territory, as hereinafter defined, in which he is a candidate, or shall not be the nominee of a political party that shall have cast more than five per cent (5%) of the votes for such office in the last immediately preceding General Election for the election of such officer, then any such candidate shall, in addition to the foregoing, file a petition signed by not less than five per cent (5%) of the registered voters of the territory in which he is a candidate. The provisions relating to filing such petition shall not apply to special elections, to the office of Justice of the Peace, to any office created since the last General Election, nor to candidates for county offices and membership in the House of Representatives if no political party primary is held in the county for such offices. The petition of five per cent (5%) of the registered voters provided for hereinbefore shall be used for only one individual candidate, and two or more candidates shall not be permitted to utilize the same petition. The term 'territory' as used hereinabove shall mean the area in which the voters who are authorized to vote for such candidate reside, except that such term shall mean the judicial circuit when the office of Judge of the Superior Court or Solicitor General is sought by a candidate. The petition signed by five per cent (5%) of the

voters, as aforesaid, shall be accompanied by a sworn statement signed by the candidate or the highest official of the political party of the territory involved, or both, to the effect that each of the persons whose name appears on said petition was a duly qualified and registered voter at the last general election, and that each such voter whose name is listed on said petition signed his own name on said petition. All candidates for municipal offices shall file notice of their candidacy either by themselves or by the proper authority of the party nominating them in the manner and in the time provided by the charter of said municipality, or in the event such is not covered by said charter such notice shall be filed with the proper election officials of the municipality not less than fifteen (15) days before the regular election. In the event of the resignation or death of any nominee of any political party prior to the regular election, at which the name of said nominee is to appear on the official ballot, said vacancy in nomination shall be filled in such manner as may be determined by the proper authority of such party."

Section 5. With respect to political party primaries for nomination to the State Senate for the 1956-66 term and thereafter, any person desiring to offer as a candidate for nomination by primary in any State senatorial district shall qualify with the State Executive Committee of his party, which shall prescribe uniform rules and uniform qualifying fees to be applicable to the conduct of primaries in each senatorial district throughout the State. The State Executive Committee shall bear the cost of holding and conducting such primaries and may call upon county executive committees to assist in holding and conducting such primaries. The State Executive Committee shall certify all State Senatorial nominees to the Secretary of State for placement on the General Election ballot as otherwise provided by law.

Section 6. Section 1 of an Act approved February 20, 1956 (Ga. L. 1956, Vol. I, p. 159), as amended by an Act approved February 15, 1960 (Ga. L. 1960, p. 116), relating to county primaries, is hereby amended by striking said section and by inserting in lieu thereof the following:

Section 1. "Any other provision of law to the contrary notwithstanding, any person who has been or who hereafter is nominated for membership in the House of Representatives, either in a County primary or the State primary, shall be the nominee of such political party, and the names of such candidates shall be placed on the general election ballot as the official nominee of such party; provided, however, no county primary in which candidates for the House of Representatives are voted on shall be conducted prior to the first day of March of any year, and when so called, all candidates for nomination to the House of Representatives shall run therein."

Section 7. An Act providing for absentee voting by members of the military, approved February 26, 1953 (Ga. L. 1953, Jan.-Feb. Sess., p. 244), as amended, particularly by an Act approved December 22, 1953 (Ga. L. 1953, Nov.-Dec. Sess., p. 335), and an Act approved April 5, 1961 (Ga. L. 1961, p. 432), and an Act approved February 9, 1962 (Ga. L. 1962, Vol. I, p. 15) is hereby amended by striking paragraph 2 of section 8 in its entirety, and inserting in lieu thereof the following:

"2. Whenever any political party shall hold primary elections for nomination of candidates for the office of Governor, State House Officials, United States Senators, Members of Congress, Justices of the Supreme Court, Judges of the Court of Appeals, Judges of the Superior Courts, State Senators, and Solicitors-General, the same shall be held on one and the same date throughout the State, which shall be on the second Wednesday in September of each year in which there is a regular general

election. The foregoing provisions shall apply to any such primary election held in the year 1964, and thereafter, but shall not apply to the special primaries for State Senators held in 1962."

Section 8. Section 1 of an Act approved March 12, 1941 (Ga. L. 1941, p. 324; Code Ann., sec. 34-1914), relating to ballots in primary elections and the qualifying of candidates in primary elections, is hereby amended by striking therefrom the last sentence, and by inserting in lieu thereof the following:

"All candidates for nomination for county offices shall qualify as such candidates in accordance with the rules of the party calling the primary, not later than 30 days previous to the holding of such primary, and the Committee or other party authority of such party shall not fix any other or different time limit for qualifications, provided, however, that this provision shall not apply to special primary elections to fill vacancies."

Section 9. Code section 47-102, relating to State Senatorial Districts, as amended, is hereby amended by striking said Section in its entirety and inserting in lieu thereof a new Code section 47-102 to read as follows:

"There shall be fifty-four (54) Senatorial Districts of the State of Georgia, each to be represented by one Senator, and such Districts shall be distributed and composed of the various counties or portions of counties of said State as follows:

1. That portion of Chatham County, more particularly described as follows:

All that land starting from a point 85′ north east of the projection of the centerline of Bull Street; then in a southeasterly direction along the centerline of Bull Street to its intersection with the centerline of Victory Drive; then in

an easterly direction along the centerline of Victory Drive to its intersection with the centerline of Skidaway Road; then in a southerly direction along the centerline of Skidaway Road to its intersection with the centerline of DeRenne Avenue; then in a westerly direction along the centerline of DeRenne Avenue to its intersection with the centerline of the Casey Canal; then in a southeasterly direction along the centerline of the Casey Canal to its intersection with the centerline of Bacon Park Drive; then in an easterly direction along the centerline of Bacon Park Drive to its intersection with the centerline of the Power Line; then in a southerly direction along the centerline of the Power Line to its intersection with the centerline of Intermediate Road; then in an easterly direction along the centerline of Intermediate Road to its intersection with the centerline of Skidaway Road; then in a southerly direction along the centerline of Skidaway Road to its intersection with the centerline of Montgomery Cross Road; then in a westerly direction along the centerline of Montgomery Cross Road to its intersection with the east boundary line of Hunter Air Force Base; then in a northerly direction along the east boundary line of Hunter Air Force Base to its intersection with the centerline of Middleground Road; then in a northeasterly direction along the centerline of Middleground Road to its intersection with the centerline of Montgomery Street; then in a northeasterly direction along the centerline of Montgomery Street to its intersection with the centerline of 52nd Street extended; then in a westerly direction along the centerline of 52nd Street extended to the city limits line; then in a northwesterly direction along the corporate limit line of the City of Savannah to its intersection with the centerline of Stiles Avenue; then in a northeasterly direction along the centerline of Stiles Avenue to its intersection with the centerline of Louisville Road; then in a westerly direction along the centerline of Louisville Road to its intersection with the

centerline of Lathrop Avenue East; then in a northerly direction along the centerline of Lathrop Avenue East to its intersection with the corporate limit line of the City of Savannah; then in a northeasterly direction along the corporate limit line of the City of Savannah to a point 85' northeast of the projection of the centerline of Bull Street.

2. That portion of Chatham County, more particularly described as follows:

All that area bounded on the north starting from a point 85' northeast of the projection of the centerline of Bull Street; then in a northeasterly direction along the centerline of the corporate limit line projected to the county limit line; then along the county limit line along the Back River to the northeasterly tip of Elba Island; then in a southwesterly direction along the centerline of the Savannah River to its intersection with the projection of the centerline of the South Channel; then in a southeasterly direction along the centerline of the South Channel to its intersection with projection of the centerline of the Wilmington River; then in a southwesterly direction along the centerline of the Wilmington River to its intersection with the projection of the northern line of the corporate limits of the Town of Thunderbolt; then in a westerly direction along said northern line and in a southerly direction and in an easterly direction along the contour of the line representing the corporate limits of the Town of Thunderbolt to a point where the southern line of the corporate limits of the Town of Thunderbolt projected again intersects with the center line of Wilmington River; then in an easterly direction along the centerline of the Wilmington River to its intersection with the projection of the centerline of the Herb River; then in a southwesterly direction along the centerline of the Herb River to its intersection with the centerline of Skidaway Road; then in a northerly direction along the centerline of Skidaway

Road to its intersection with the centerline of Intermediate Road; then in a westerly direction along the intersection of Intermediate Road to its intersection with the centerline of the Power Line; then in a northerly direction along the centerline of the Power Line to its intersection with the centerline of Bacon Park Drive; then in a westerly direction along the centerline of Bacon Park Drive to its intersection with the centerline of the Casey Canal; then in a northeasterly direction along the centerline of the Casey Canal to its intersection with the centerline of DeRenne Avenue; then in an easterly direction along the centerline of DeRenne Avenue to its intersection with the centerline of Skidaway Road; then in a northerly direction along the centerline of Skidaway Road to its intersection with the centerline of Victory Drive; then in an easterly direction along the centerline of Victory Drive to its intersection with the centerline of Bull Street; then in a northerly direction along the centerline of Bull Street to its intersection with the corporate limit line of the City of Savannah.

3. That portion of Chatham County, more particularly described as follows:

All that land inside the county limit line of Chatham County not included in Districts One and Two.

4. Screven, Effingham, Bulloch, Candler, Evans, and Tattnall

5. Bryan, Liberty, Long, McIntosh and Glynn

6. Jeff Davis, Appling, Bacon, Wayne, Pierce, Brantley, Charlton and Camden

7. Atkinson, Clinch, Coffee, Lanier and Ware

8. Berrien, Cook, Echols and Lowndes

9. Brooks, Colquitt and Tift

10. Grady, Mitchell and Thomas

11. Baker, Calhoun, Clay, Decatur, Early, Miller, and Seminole

12. Dougherty County

13. Ben Hill, Crisp, Irwin, Lee, Turner and Worth

14. Chattahoochee, Randolph, Stewart, Sumter, Terrell, Webster and Quitman

15. That portion of Muscogee County, more particularly described as follows:

That area south of a point where the centerline of 17th Street intersects the Chattahoochee River and running thence in an easterly direction along the centerline of said 17th Street to the centerline of Dell Drive and running thence south along the centerline of Dell Drive to the centerline of Macon Road and running thence in an easterly direction along the centerline of said Macon Road to the east line of Muscogee County.

16. That portion of Muscogee County, more particularly described as follows:

That area north of a point where the centerline of 17th Street intersects with Chattahoochee River and running thence in an easterly direction along the centerline of said 17th Street to the centerline of Dell Drive and running thence south along the centerline of Dell Drive to the centerline of Macon Road and running thence in an easterly direction along the centerline of said Macon Road to the east line of Muscogee County.

17. Harris, Macon, Marion, Schley, Talbot, Taylor and Upson

18. Crawford, Twiggs, Houston and Peach

19. Bleckley, Dodge, Pulaski, Telfair, Dooly and Wilcox

20. Johnson, Laurens, Treutlen, Wheeler, Montgomery and Toombs

21. Emanuel, Jenkins, Burke and Jefferson

22. That portion of Richmond County, more particularly described as follows:

All that territory in Richmond County lying and being within the corporate limits of the City of Augusta.

23. That portion of Richmond County, more particularly described as follows:

All that territory in Richmond County lying and being outside the corporate limits of the City of Augusta.

24. Wilkes, Lincoln, Columbia, McDuffie, Glascock, Warren, Taliaferro and Greene

25. Hancock, Baldwin, Washington, Wilkinson and Jones

26. That portion of Bibb County, more particularly described as follows:

All that portion of Bibb County lying east and north of a line commencing on the south county line where U. S. Highway 41 crosses the county line and then going north along U. S. Highway 41 to the point where it intersects Pio Nono Avenue, continuing north along Pio Nono Avenue to the point where it is intersected by Newberg Avenue, east along Newberg Avenue to the point where it intersects Houston Avenue; thence northeast along Houston Avenue to the point where it intersects Broadway, northeast along Broadway to the point where it intersects Riverside Drive; thence northwest along Riverside Drive to the point where it intersects Forrest Avenue; thence southwesterly along Forrest Avenue to the point where it intersects Vineville Avenue; thence northwesterly along Vineville Avenue,

which is also U. S. Highway 41, and continuing along U. S. Highway 41 to the Monroe County line.

27. That portion of Bibb County, more particularly described as follows:

All that portion of Bibb County lying west and south of a line commencing on the south county line where U. S. Highway 41 crosses the county line and then going north along U. S. Highway 41 to the point where it intersects Pio Nono Avenue, continuing north along Pio Nono Avenue to the point where it is intersected by Newberg Avenue, east along Newberg Avenue to the point where it intersects Houston Avenue; thence northeast along Houston Avenue to the point where it intersects Broadway, northeast along Broadway to the point where it intersects Riverside Drive; thence northwest along Riverside Drive to the point where it intersects Forrest Avenue; thence southwesterly along Forrest Avenue; thence southwesterly along Forrest Avenue to the point where it intersects Vineville Avenue; thence northwesterly along Vineville Avenue, which is also U. S. Highway 41, and continuing along U. S. Highway 41 to the Monroe County line."

28. Butts, Lamar, Monroe, Pike and Spalding

29. Heard, Meriwether and Troup.

30. Carroll, Coweta and Fayette.

31. Douglas, Haralson, Paulding and Polk.

32. That portion of Cobb County, more particularly described as follows:

All that part of Cobb County lying and being in Militia Districts Gritter (911), Post Oak (1319), Elizabeth (1897), Fullers (1679), Merritts (897), Smyrna (1292), Vinings (1568), Lemons (992), and Wards 1, 5, 6, and 7 of the City of Marietta.

33. That portion of Cobb County, more particularly described as follows:

All that part of Cobb County lying and being in Militia Districts Acworth (851), Big Shanty (991), Red Rock (1318), Lost Mountain (1540), Oregon (1017), Macland (1608), Powder Springs (846), Clarkdale (1826), Austell (1378), Coxes (895), Howells (1395), Fair Oaks (1891), and Wards 2, 3, and 4 of the City of Marietta, and also that portion of the Marietta Militia District (898) outside the corporate limits of the City of Marietta.

34. That portion of Fulton County, more particularly described as follows:

Beginning at a point in the City of Atlanta in land lot 118 of the 14th district of Fulton County, Georgia at the southeast corner of Beecher Street at its intersection with White Street and Lawton Street and thence in an easterly direction along the south side of Beecher Street to its intersection with the west side of Lee Street; thence in a southernly direction along the west side of Lee Street to the intersection of Lee Street with West Whitehall Street and the west side of the right-of-way of the Central of Georgia railroad; thence southernly along the western side of the Central of Georgia railroad right-of-way to a point where the Atlanta and West Point Railway merges with the Central of Georgia railroad, in the City of East Point; thence continuing in a southernly direction along the western side of the right-of-way of the Atlanta and West Point railroad to the intersection of said right-of-way with the Fulton County-Clayton County boundary line; thence northerly; thence westerly and thence in a southernly direction along the said Fulton County-Clayton County boundary line to the intersection of said boundary line with the Fulton County-Fayette County boundary line; thence in a southwesternly direction following the meanderings of the said Fulton County-Fayette County boundary line to its inter-

section with the Fulton County-Coweta County boundary line; thence westerly along the Fulton County-Coweta County boundary line to the intersection of said boundary line with the Fulton County-Douglas County boundary line at the Chattahoochee River; thence in a northerly direction following the meanderings of the Fulton County-Douglas County boundary line and the Fulton County-Cobb County boundary line along the Chattahoochee River to the point where Utoy Creek flows into the Chattahoochee River; thence in an easterly direction along the south side of said creek to a point where Fairburn Road intersects said creek, which point is just south of the intersection of Fairburn Road with Cascade Road; thence in a northerly direction along the east side of Fairburn Road to its intersection with the Atlantic Coast Line Railroad; thence continuing in a northerly direction along the east side of the right-of-way of the Atlantic Coast Line Railroad to the intersection of said railroad and Brownlee Road in the city limits of Atlanta; thence in a southerly direction along the western side of Brownlee Road to the intersection of said road with North Utoy Creek; thence in a generally eastern direction along the south side of said creek following the meanderings thereof to a point in the John A. White Park where Beecher Court would intersect said creek if extended in a southerly direction into said park; thence north along the imaginary extension of Beecher Court to Beecher Court; thence continuing in a northerly direction along the eastern side of Beecher Court to its intersection with Beecher Street; thence in an eastern direction along the south side of Beecher Street to its intersection with Donnelly Avenue; thence in a southeasterly direction along the southwest side of Donnelly Avenue to its intersection with Lawton Street; thence in a northeasterly direction along the southeast side of Lawton Street to its intersection with White Street and Beecher Street and the point of beginning.

35. That portion of Fulton County, more particularly described as follows:

Beginning at a point on the southern boundary of land lot 108 of the 14th district of Fulton County, Georgia, which southern boundary is Gordon Street and Glenn Street, in Atlanta, Georgia, and at the intersection of Gordon and Glenn Streets with the Central of Georgia Railroad, thence in a northernly direction along the east side of the right-of-way of the Central of Georgia Railway to the intersection of said railroad with Fair Street; thence in a northwestwardly direction along the north east side of Fair Street to its intersection with Walker Street; thence north along the east side of Walker Street to its intersection with Nelson Street; thence northeastwardly along the south side of Nelson Street to its intersection with Elliott Street; thence continuing in a northerly direction along the east side of Elliott Street to the intersection of Elliott Street with Simpson Street and the Georgia Railroad; thence in a southeasternly direction along the south west side of the right-of-way of the Georgia Railroad to its intersection with Magnolia Street, and thence continuing along the right-of-way of the Georgia Railway in a southeasternly direction, which is also the southern boundary of Senatorial District 37 of Fulton County, to the intersection of the said right-of-way with Oakland Avenue, which is at the northwest corner of Oakland Cemetery; thence in a southerly direction along the west side of Oakland Avenue to the north side of Memorial Drive; thence west along the north side of Memorial Drive to Kelly Street; thence south along the west side of Kelly Street; and continuing across the East Expressway to the extension of Kelly Street continuing to the intersection of Kelly Street with Glenwood Avenue; thence west along the north side of Glenwood Avenue to Connally Street, thence south along the west side of Connally Street to its intersection with the north side of Fulton Street; thence west along the north side of

Fulton Street and following the north side of Fulton Street, north then west to the intersection of Fulton Street, with the west side of Capitol Avenue; thence south along the west side of Capitol Avenue to its intersection with the Atlanta and West Point Railroad; thence southwestwardly along the north side of the right-of-way of the Atlanta and West Point Railroad to its intersection with the South Expressway (Interstate 75); thence south along the west side of the South Expressway to a point where said expressway intersects the boundary line between Hapeville and Atlanta's City limits; thence in a southerly direction, following the Hapeville-Atlanta boundary line to the Central of Georgia Railroad; thence westwardly following the Hapeville-Atlanta boundary line to a point where said boundary turns south; thence south along said Atlanta-Hapeville boundary to the point where said boundary intersects with the Fulton County-Clayton County boundary line; thence west along said county boundary line to a point where said boundary line turns south; thence continuing south along said boundary line to a point where it turns west; thence west along said Fulton County-Clayton County boundary line to a point where it turns north; and thence north along said boundary line to a point where it intersects the Atlanta and West Point railway right-of-way; thence north along the east side of the Atlanta and West Point right-of-way; which right-of-way also is the eastern boundary of Senatorial District 34, to the intersection of said Atlanta and West Point right-of-way with the Central of Georgia right-of-way, and thence continuing in a northerly direction along the east side of the Central of Georgia right-of-way and the boundary line of the 34th Senatorial District, to a point where said railroad right-of-way intersects with Gordon Street and Glenn Street and the point of beginning.

36. That portion of Fulton County, more particularly described as follows:

Beginning on the eastern border of land lot 14 of the 14th district of Fulton County Georgia, which is also the Fulton County-DeKalb County boundary line, at a point on said boundary where it intersects with the right of way of the Georgia Railroad; thence in a southwestern direction along the south side of the right of way of the Georgia Railway to the intersection of said right of way with Oakland Avenue, which is at the northwest corner of Oakland Cemetery; thence in a southerly direction following the eastern boundary of the 35th Senatorial District, and continuing to follow the meanderings of said boundary south along Oakland Avenue; West along Memorial Drive, south along Kelly Street, west along Glenwood Avenue, south along Connally Street, west, north and west again along Fulton Street, thence south along Capitol Avenue, thence southwestwardly along the right of way of the Atlanta and West Point Railroad, thence south along the South Expressway, and thence continuing to follow the boundary of said Senatorial District 35 along the Atlanta-Hapeville boundary line to the intersection thereof with the Fulton County-Clayton County boundary; thence east along the Fulton County and Clayton County boundary line to its intersection with the Fulton County-DeKalb County boundary line; thence north along the Fulton County-DeKalb County boundary line to its intersection with the Georgia Railroad right of way and the point of beginning.

37. That portion of Fulton County, more particularly described as follows:

Beginning at a point on the eastern border of land lot 10 of the 17th district of Fulton County, Georgia, which border is also the Fulton County-DeKalb County boundary line, where the Southern Railroad intersects the said eastern border of land lot 10; and thence in a southerly direction along the Fulton-DeKalb County boundary line to the intersection of said boundary with the Georgia Railroad

which intersection is on the eastern boundary of land lot 14 of the 14th district of Fulton County, Georgia; thence in a southwestern direction along the north side of the right of way of the Georgia Railroad and continuing along the north side of said right of way as same turns to the north, and continuing in a northwestern direction along said right of way, generally parallel with Decatur Street and Marietta Street in downtown Atlanta, to the intersection of said right of way with Magnolia Street; thence in a northeasternly direction along the west side of Magnolia Street to its intersection with Luckie Street and Cain Street; thence in an easternly direction along the south side of Cain Street to the intersection of Cain Street and Williams Street; thence in a northernly direction along the eastern side of Williams Street to its intersection with North Avenue; thence in an eastern direction along the south side of North Avenue to the intersection of North Avenue with West Peachtree Street; thence north along the east side of West Peachtree Street to its intersection with Tenth Street; thence east along the south side of Tenth Street to its intersection at Monroe Drive with the right of way of the Southern Railroad; thence north along the east side of the right of way of the Southern Railroad to the intersection of said right of way with the Fulton-DeKalb County boundary line and the point of beginning.

38. That portion of Fulton County, more particularly described as follows:

Beginning at a point on the southern boundary of land lot 108 of the 14th district of Fulton County, Georgia, which southern boundary is Gordon and Glenn Streets and at the intersection of Gordon and Glenn Streets with the Central of Georgia Railroad; thence in a southernly direction along the eastern side of the right of way of the Central of Georgia railway to a point on the said right of way where Lee Street intersects with West Whitehall Street;

thence in a northernly direction along the east side of Lee Street to its intersection with Beecher Street; thence in a westernly direction along the north boundary of Senatorial District 34 of Fulton County, following Beecher Street, Lawton Street, Beecher Street, Beecher Court, North Utoy Creek, Brownlee Road, the right of way of the Atlantic Coast Line Railroad, Fairburn Road, Utoy Creek, westwardly to the Chattachoochee River, at which point the north boundary of Senatorial District 34 intersects the Fulton County-Cobb County boundary line; thence in a northeasternly direction following the meanderings of the Fulton County-Cobb County boundary line along the Chattachoochee River to a point where the Southern Railroad crosses the Chattachoochee River, at which point the southwestern boundary of Senatorial District 39 intersects the Fulton County-Cobb County boundary; thence in an easternly direction following the southwestern boundary of the 39th Senatorial District along the Southern Railroad, Marietta Road, Perry Boulevard, West Marietta Street, continuing to follow said boundary south along Ashby Street, and thence easternly along Gordon Street to the intersection of Gordon with Glenn Streets and the Central of Georgia Railroad and the point of beginning.

39. That portion of Fulton County more particularly described as follows:

Beginning at a point on the southern boundary of land lot 108 of the 14th district of Fulton County, Georgia, which southern boundary is Gordon and Glenn Streets, and at the intersection of Gordon and Glenn Streets with the Central of Georgia Railroad; and thence north along the northwest side of the right of way of the Central of Georgia Railroad to the intersection of said railroad with Fair Street; thence northwestwardly along the southwest side of Fair Street to its intersection with Walker Street;

thence north along the west side of Walker Street to its intersection with Nelson Street; thence northeastwardly along the north side of Nelson Street to its intersection with Elliott Street; thence continuing in a northly direction along the west side of Elliott Street to the intersection of Elliott with Simpson Street and the Georgia Railroad; thence in a southeasternly direction along the east side of the right of way of the Georgia Railroad to the intersection of said railroad and Magnolia Street; thence in a northeasternly direction along Magnolia Street, which is the eastern boundary of Senatorial District 37 and continuing along the eastern boundary of Senatorial District 37 along Cain Street, Williams Street, North Avenue, West Peachtree Street, Tenth Street to the right of way of the Southern Railway and continuing along said boundary in a northerly direction along the right of way of the Southern Railway to the intersection of the said right of way with the main line of the Southern Railway in land lot 103 of the 17th district of Fulton County; thence in a southeasternly direction along the northwest side of the right of way of the main line of the said Southern Railway to the Intersection of said railway with the Northwest Leg of the Atlanta Expressway; thence in a northwesternly direction along the south side of the said Northwest Expressway to its intersection with Peachtree Creek; thence in a westernly direction along the South side of said creek following the meanderings thereof to Moores Mill Road; thence in a southwesternly direction along the southeast side of Moores Mill Road to the intersection of Moores Mill Road with the Seaboard Airline Railway; thence in a northwesternly direction along the southwest side of the right of way of the Seaboard Railway to the point where the Seaboard Airline Railway crosses the Chattahoochee River and the Fulton County-Cobb County boundary; thence in a southwesternly direction along the Fulton County-Cobb County boundary and

the Chattahoochee River to a point in land lot 263 of the 17th district of Fulton County, Georgia, where the Southern Railway crosses the Chattahoochee River and said boundary; thence in a southeasterly direction along the northeast side of the right of way of the Southern Railway to the intersection of said railroad with Marietta Road; thence in a southernly direction along the east side of Marietta Road to the intersection with Perry Boulevard; thence southeasternly along the north side of Perry Boulevard to its intersection with West Marietta Street; and continuing along the north side of West Marietta Street in a southeasterly direction to its intersection with Ashby Street; thence southerly along the east side of Ashby Street to the intersection of Ashby Street and Gordon Street; thence east along the north side of Gordon Street to the intersection of Gordon Street with Glenn Street and the Central of Georgia Railway and the point of beginning.

40. That portion of Fulton County, more particularly described as follows:

Beginning on the eastern border of land lot 10 of the 17th district of Fulton County, Georgia, which border is also the Fulton-DeKalb County boundary line, at a point where the Southern Railway intersects with the said eastern border of the said land lot 10 and the Fulton County-DeKalb County boundary; thence in a southerly direction following the northwest boundary of Senatorial District 37, along the northwest side of the Southern Railway right of way, and continuing to follow said right of way along the border of Senatorial District 39 to a point where said right of way intersects the North West Leg of the Atlanta Expressway; thence continuing along the north side of the Northwest Leg of the said expressway to its intersection with Peachtree Creek, and thence in a westwardly direction on the north side of Peachtree Creek continuing to follow the north boundary of Senatorial District 39, following the

meanderings of said creek to Moores Mill Road; thence continuing to follow the boundary of Senatorial District 39 along the northwest side of Moores Mill Road to the Seaboard Airline Railroad; thence northwestwardly along the northeast side of said railroad right of way to the Chattahoochee River and the Fulton County-Cobb County boundary; thence in a northerly direction along the Fulton County-Cobb County boundary and the Chattahoochee River so long as the said boundary follows the meanderings of said river; thence continuing to follow the meanderings of the Fulton County-Cobb County boundary line to the intersection thereof with the Fulton County-Cherokee County boundary; thence in a northerly direction following the meanderings of the Cherokee-Fulton County boundary line to a point where said boundary line turns eastwardly; thence eastwardly along the Cherokee-Fulton County boundary line to the intersection of said boundary with the Fulton County-Forsyth County boundary line; thence southerly and thence southeasterly following the meanderings of the Fulton County-Forsyth County boundary line to the intersection of said boundary with the Fulton County-Gwinnett County boundary line; thence southwestwardly following the meanderings of the Fulton County-Gwinnett County boundary line to the intersection of said boundary with the Fulton County-DeKalb County boundary lines; thence in a westwardly direction, and thence in a southerly direction, following the meanderings of the Fulton County-DeKalb County line to its intersection with the Southern Railway right of way and the point of beginning.

41. That portion of DeKalb County, more particularly described as follows:

All that part of DeKalb County lying and being in Militia Districts numbered 524, 686, 1416, 572, 1327, 1045, 637, 1398, 563, 683, 487, as presently laid out.

42. That portion of DeKalb County, more particularly described as follows:

All that part of DeKalb County lying and being in Militia District numbered 531, as presently laid out.

43. That portion of DeKalb County more particularly described as follows:

All that part of DeKalb County lying and being in Militia Districts numbered 1379, 1586, 1666, 1342, 536, 1448, as presently laid out.

44. Clayton, Henry, Rockdale

45. Putnam, Jasper, Morgan, Newton and Walton

46. Oconee, Clark, Madison and Oglethorpe

47. Stephens, Franklin, Hart and Elbert

48. Banks, Jackson, Barrow and Gwinnett

49. Dawson, Forsyth, Hall and Lumpkin

50. Fannin, Gilmer, Habersham, Pickens, Rabun, Towns, Union and White.

51. Bartow, Cherokee and Gordon

52. Floyd County

53. Chattoga, Dade and Walker

53. Catoosa, Murray and Whitfield

Each Senator must be a resident of his own Senatorial District and shall be elected by the voters of his own District, except that the Senators from those Senatorial Districts consisting of less than one county shall be elected

by all the voters of the county in which such Senatorial District is located.[1]

Any person offering as a candidate for Senator in a District composed of one county or less, must have been a resident and a registered voter of such District for the twelve (12) months immediately preceding the date of the general election. Any person offering as a candidate for Senator in a District composed of more than one county, must have been a resident and a registered voter of the particular county in said District from which he offers as a candidate for the twelve (12) months immediately preceding the date of the general election.

Section 10. It shall be the duty of the General Assembly after each federal decennial census to reapportion the Senate if necessary to conform to changes in population. Entire counties may be combined to form Senatorial Districts but a part of a county may not be combined with all or any part of another county or counties to form a Senatorial District. Each county in a Senatorial District composed of more than one county must adjoin at least one other county in the same Senatorial District and Districts shall be arranged so as to be as compact as practicable. There may be more than one Senatorial District within a county.

Section 11. The provisions of section 3 of this Act shall apply only to the members of the Senate elected for the 1963-64 term. The provisions of section 3 shall supersede all other provisions of law in conflict therewith, including any provisions of other sections of this Act. The

[1] In *Finch v. Gray*, Case No. A 96441 in the Superior Court of Fulton County, Georgia, the Court has issued Orders, dated October 20 and 30, 1962, nullifying this exception by requiring that senatorial candidates be nominated and elected only by the voters residing within their respective districts, and enjoining county-wide voting for senatorial candidates in multi-districted counties.

provisions of section 3 shall expire on the date of the convening of the General Assembly in January, 1963. All other laws governing primaries and elections for members of the Senate not inconsistent therewith shall apply to the special primaries and elections provided for in said section.

Section 12. Nothing herein shall be construed as an expression of the intention by the General Assembly of Georgia to apportion both Houses thereof according to population, rather, the General Assembly hereby expressly declares its intention to be that the Senate of Georgia be apportioned on population and that the House be apportioned on geography.

Section 13. All laws and parts of laws in conflict with this Action are hereby repealed.

Approved October 5, 1962.